



EUROPEAN COMMISSION

DG Competition

***Case M.8867 – CD&R FUND IX / MRH GB***

Only the English text is available and authentic.

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

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Article 4(4)

Date: 4.6.2018



## EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 4.6.2018  
C(2018) 3676 final

PUBLIC VERSION

**To the Notifying Party**

**To the Competition and Markets  
Authority**

**Subject: Case M.8867 – CD&R FUND IX / MRH GB**  
**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 23/04/2018**

**Legal deadline for response of Member States: 18/05/2018**

**Legal deadline for the Commission decision under Article 4(4): 04/06/2018**

Dear Sir or Madam,

### 1. INTRODUCTION

- (1) On 23 April 2018, the Commission received, by means of a Reasoned Submission, a referral request pursuant to Article 4(4) of 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 the United Kingdom.
- (2) 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

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

where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

- (3) A copy of this Reasoned Submission was transmitted to all Member States on 23 April 2018.
- (4) By letter of 2 May 2018, the Competition and Markets Authority ("CMA") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## **2. THE PARTIES AND THE CONCENTRATION**

- (5) CD&R Fund IX, L.P. ("CD&R") is a private equity fund managed by Clayton Dubilier & Rice LLC ("CD&R Group"). CD&R Group is a private equity group based in the U.S. which originates and structures management buyouts, strategic equity investments and other strategic investments through a number of different funds in a variety of economic sectors. CD&R currently exercises indirect sole control over the Motor Fuel Group ("MFG"). MFG owns and operates 438 petrol stations across the UK, and supplies motor fuel to 183 'dealer' sites in the UK.
- (6) MRH (GB) Limited and its subsidiaries ("MRH") own and operate 489 petrol stations located across the UK. MRH also owns Isle of Wight Fuels Limited, which operates the bulk liquid fuel storage terminal on the Isle of Wight, and distributes fuels on a wholesale basis to end consumers on the island.
- (7) The proposed transaction concerns the acquisition of sole control over MRH by CD&R. CD&R and MRH are referred to collectively as the "Parties".
- (8) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (9) The undertakings concerned have a combined aggregated world-wide turnover<sup>3</sup> of more than EUR 5 billion.<sup>4</sup> They have a Community-wide turnover in excess of EUR 250 million.<sup>5</sup> The undertakings do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

## **4. ASSESSMENT**

### **A Relevant product markets**

- (10) On the basis of the information submitted in the Reasoned Submission, the proposed transaction concerns the retail supply of road fuel and the retail supply of automotive

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10/07/2007.

<sup>4</sup> CD&R: EUR [...]; MRH: EUR [...] million.

<sup>5</sup> CD&R: EUR [...] million; MRH: EUR [...] million.

liquefied petroleum gas ("auto-LPG") in the UK, as well as wholesale (non-retail) supply of fuel in the UK. The Parties' activities do not overlap outside of the UK.<sup>6</sup>

*Retail supply of road fuel*

- (11) The Commission has previously considered that the retail supply of motor fuels constitutes a separate product market which exclusively applies to forecourt sales. This encompasses sales made at all service stations, both branded and unbranded, in- and outside an integrated retail network. The Commission has also considered whether there may be segmentation of the overall product market for the retail sale of motor fuels into motorway and non-motorway retail fuels market. However, any distinction along these lines has been left open.<sup>7</sup>
- (12) The Commission has further considered, but left open, whether it is necessary to distinguish between different types of fuels (gasoline, diesel and auto-LPG).<sup>8</sup>

*Retail supply of auto-LPG*

- (13) With respect to retail sales of auto-LPG, the Commission has considered whether automotive LPG could constitute a separate relevant product market, but ultimately has left this question open.<sup>9</sup>

*Wholesale (non-retail) supply of fuel*

- (14) The Commission has previously distinguished the market for the non-retail sale of refined fuel products.<sup>10</sup> The Commission previously also considered that the non-retail sale of each refined fuel product constitutes a separate product market.<sup>11</sup>

## **B Relevant geographic market**

*Retail supply of road fuel*

- (15) The Commission has previously considered that the market for retail sale of motor fuels is national in scope, due to overlapping catchment areas and chains of substitution. However, the Commission has also acknowledged that these markets have a more local aspect, as vehicle owners usually resort to service stations in their vicinity.<sup>12</sup>

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<sup>6</sup> The Parties are not active in Northern Ireland.

<sup>7</sup> Case M.7388 *MOL / Lukoil Czech Republic*.

<sup>8</sup> Case M.7388 *MOL / Lukoil Czech Republic*; Case M.7196 – *Kuwait Petroleum BV / Kuwait Petroleum Italia / Shell Italia / Shell Aviazione*; Case M.5637 *Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings*.

<sup>9</sup> Only in Case M.5005 *Galp Energia / ExxonMobil Iberia*, the Commission finally decided that Bulk LPG and Bottled LPG belong to separate relevant product markets. In other cases, this possibility was left open: Case M.5637 *Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings*; Case M.3664 *Repsol Butano / Shell Gass (LPG)*; Case M.3375 *Statoil / SDS*.

<sup>10</sup> Case M.7311 *MOL / Eni Ceska / Eni Romania / Eni Slovensko*; Case M.7616 *DCC / DLG Danish Energy Business*; Case M.7603 *Statoil fuel and retail / Dansk fuels*.

<sup>11</sup> Case M.7603 *Statoil fuel and retail / Dansk fuels*.

<sup>12</sup> Case M.7603 *Statoil fuel and retail / Dansk fuels*; Case M.5781 *Total Holdings Europe SAS / ERG SPA / JV*; Case M.7311 *MOL / Eni Ceska / Eni Romania / Eni Slovensko*; Case M.7388 *MOL / Lukoil Czech Republic*; Case M.7196 *Kuwait Petroleum BV / Kuwait Petroleum Italia / Shell Italia / Shell Aviazione*.

- (16) The CMA has considered that each petrol station forecourt has a particular "catchment" area and has adopted drive-time isochrones of 10 minutes in urban areas and 20 minutes in rural areas as a reasonable proxy for the potential geographic scope of these local markets for the retail supply of fuel.<sup>13</sup>

*Retail supply of auto-LPG*

- (17) The Commission has previously considered that LPG markets appear to be national in scope.<sup>14</sup>
- (18) The CMA has in previous cases considered local markets for the supply of auto-LPG based, on a conservative basis, on drive-time isochrones of 40 minutes around the sites.<sup>15</sup>

*Wholesale (non-retail) supply of fuel*

- (19) The Commission has previously considered that the geographic scope of the non-retail supply of motor fuels could be sub-national, national, regional (specifically in relation to Scandinavia) or around a radius but has ultimately left the definition open.<sup>16</sup>
- (20) The UK competition authorities have considered that wholesale suppliers compete on a national, regional within the UK or local basis, depending on the location of their distribution network.<sup>17</sup>

## **C Assessment**

*Legal requirements*

- (21) According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:<sup>18</sup>
- (a) there must be indications that the concentration may significantly affect competition in a market or markets, and
- (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.
- (22) With regard to the first requirement, the proposed transaction may significantly affect competition given that both Parties own and operate numerous petrol stations (in addition to which MFG supplies motor fuel to 183 'dealer' sites in the UK). Although at a national level, the Parties' combined market share in respect of the retail supply of road fuel is [10-20]% (based on the number of retail sites owned) or [10-20]% (based on the volume of fuel sold), the proposed transaction would lead to

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<sup>13</sup> MRH/Esso, MFG/Shell and MFG/Murco.

<sup>14</sup> Case M.5005 *Galp Energia / Exxonmobil Iberia*; Case M.3664 *Repsol Butano / Shell Gass (LPG)*; Case M.1628 *TotalFina / Elf Aquitaine*.

<sup>15</sup> MFG/Shell and MFG/Murco.

<sup>16</sup> Case M.7616 *DCC / DLG Danish Energy Business*; Case M.7388 *MOL / Lukoil Czech Republic*; Case M.5846 *Shell / Cosan / JV*; Case M.3291 *Preem / Skandinaviska Raffineradi*.

<sup>17</sup> UK Competition Commission's Report in *DCC Energy UK Limited / Rontec Investments Limited*.

<sup>18</sup> Commission Notice on Case Referral in respect of concentrations – para. 16.

multiple horizontally affected markets were one to consider local catchment areas (based on 10-minute drive times in urban areas and 20-minute drive times in rural areas: [20-30%]-[60-70]%, depending on the local market).

- (23) As regards the retail supply of auto-LPG, the Parties' combined market share at national level would be [5-10]% based on the number of retail sites owned<sup>19</sup>, but again, multiple affected markets would arise at local catchment area level ([20-30]%, depending on the local market). Furthermore, the proposed transaction leads to vertically affected markets in six local catchment areas where the combined share of the Parties exceeds 30% in the retail supply of road fuels and the Parties are active in the wholesale supply of fuel.
- (24) With regard to the second requirement, the markets for the retail supply of road fuel or auto-LPG are clearly national or smaller than national (local catchment areas within the UK). As regard the wholesale (non-retail) supply of fuel, the Parties consider that the affected market is the wholesale supply of fuel at a national level. MFG only has wholesale supply of fuel activities in the UK. Moreover, given that MRH is solely active in the UK, any vertically affected markets that arise from the transaction between the wholesale and retail supply of fuel are confined to the UK.
- (25) In view of the foregoing, the preliminary assessment suggests that the proposed transaction may significantly affect competition within a Member State and that the effects of the Transaction would be restricted to the UK. Furthermore, the markets in question present all the characteristics of a distinct market.

#### *Additional factors*

- (26) In addition to the verification of the legal requirements, it should be also considered whether referral of the case is appropriate, and in particular whether the competition authority to which the parties are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case.<sup>20</sup>
- (27) Given the focus of any competitive effects of the proposed transaction is confined to the UK (MRH is solely active in the UK), the CMA appears well placed to examine the transaction. Furthermore, the Parties submitted that the CMA has considered the impact of previous transactions involving petrol stations at local level (both concerning the retail supply of road fuel and the retail supply of auto-LPG).<sup>21</sup>
- (28) Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case will be referred to a single competition authority, which is an important factor of administrative efficiency.

## **5. REFERRAL**

- (29) 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

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<sup>19</sup> It was not possible to calculate a market share based on volume or value.

<sup>20</sup> Commission Notice on Case Referral in respect of concentrations – para. 19.

<sup>21</sup> MRH/Esso, MFG/Shell and MFG/Murco.

within a Member State which presents all the characteristics of a distinct market. Moreover, a referral in this case appears appropriate based on the other factors to be considered.

- (30) The Commission notice on case referral in respect of concentrations<sup>22</sup> (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 on a distinct market in 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...*".
- (31) Point 18 of the notice also indicates that "*the requesting parties are required to show that a geographic market in which competition is affected by the transaction in the manner just described (paragraph 17) is national, or narrower than national in scope*".
- (32) Moreover, point 20 of the notice provides that "*Concentrations with a Community dimension which are likely to affect competition in markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State, are the most appropriate candidate cases for referral to that Member State. This applies in particular to cases where the impact would occur on a distinct market which does not constitute a substantial part of the common market*".
- (33) In addition, point 23 of the notice states that "*Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned*".
- (34) 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 the UK, and that the requested referral would be consistent with points 17-23 of the notice.

## 6. CONCLUSION

- (35) For the above reasons, and given that the UK has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the UK's CMA. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*

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<sup>22</sup> OJ C 56, 5.3.2005, p. 2.