

*Case No IV/M.088 -  
ELF / ENTERPRISE*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(a) INAPPLICABILITY  
Date: 24.07.1991

*Also available in the CELEX database  
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VERSION FOR THE PUBLIC

MERGER PROCEDURE  
ARTICLE 6(1)(a) DECISION

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delivery

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.088 - ELF / ENTERPRISE

Your notification of 21.06.1991 pursuant to Article 4 of  
Council Regulation No 4064/89.

- 1) The proposed operation consists of the acquisition by Enterprise Oil Plc (Enterprise) of one third of the share capital of E E Petroleum Ltd (EEP), a wholly owned subsidiary of Société Nationale Elf Aquitaine (SNEA). This subsidiary company is concerned with the exploration, production and marketing of crude oil and gas reserves in the UK sector of the North Sea.
- 2) After examination of the notification, the Commission has concluded that the notified operation does not fall within the scope of application of Council Regulation No 4064/89.

The agreement

- 3) The parties have agreed to set up a joint venture operation in the UK sector of the North Sea. Enterprise will acquire 33.33% of the issued share capital of EEP as consideration for transferring to EEP the entire issued share capital of Todaymarket Ltd, a wholly owned subsidiary of Enterprise. Todaymarket Ltd holds 31.9% of Enterprise's interest in North Sea block 22/11 and this block is estimated to represent 60% of the Nelson field. EEP will hold these assets together with the exploration and production interests which it acquired from the Occidental Petroleum Corporation in the concentration which was approved by the Commission on 13th June 1991. At the same time SNEA will reduce its stake in the issued share capital of Enterprise from approximately 25.1% to 10.1%. The transaction will allow SNEA to obtain an equity participation in the

reserves of the Nelson field while Enterprise will be able to reduce its financing commitments in developing its interest in this field. The Nelson field has just received development consent with first production of crude oil and natural gas expected in 1994.

#### Joint venture

- 4) In order to decide whether EEP is a joint venture within the meaning of the Regulation, it is necessary to consider whether the undertaking is jointly controlled. SNEA will hold 2/3 of the issued share capital of the undertaking and will appoint 2/3 of the board of directors, the remaining third being appointed by Enterprise which will hold 1/3 of the issued share capital. However, certain matters require the consent of both shareholders. In particular, applications for petroleum licences or concessions for exploration activity require the agreement of both parties as do the annual exploration and appraisal budgets and work programmes. This gives Enterprise a veto over important decisions concerning EEP's activities. These rights go beyond the usual protection afforded to a minority shareholder in order to protect its investment and allow Enterprise, jointly with SNEA, to exercise control of EEP. The Commission has therefore concluded that EEP is a joint venture.

#### Community dimension

- 5) The operation has a Community dimension. The combined aggregate worldwide turnover of the SNEA group and Enterprise was 26,159 mio ECU in 1990. The SNEA group had a Community-wide turnover of 18,949 mio ECU and the corresponding figure for Enterprise was 485 mio ECU. The two undertakings did not attain more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

#### Concentration and cooperation

- 6) The next matter to be considered is whether the joint venture is cooperative or concentrative in nature. The proposed natural gas exploration, production and marketing. The product markets are therefore the exploration, production and marketing of firstly crude oil and secondly natural gas. Both SNEA and Enterprise will remain active on these markets. They both currently hold licences in the UK sector of the North Sea and therefore they will also be operating in the same geographic market as the joint venture, even if the geographic market is defined as narrowly as the UK sector of the North Sea. The Commission has therefore concluded that the joint venture is cooperative in nature.
- 7) Although neither of the parent companies intend to withdraw from the market in question, they agree not to compete with the joint venture for any licence. This restriction is consistent with a coordination of competitive behaviour between the parent companies since the effect is only that once the parties have agreed that the joint venture will be used as the vehicle for the given activities, they are each prevented from undermining

that agreement. Since the joint venture is cooperative in nature, it follows that the operation is not a concentration within the meaning of Article 3 of the Merger Regulation.

- 8) The Commission will treat the notification pursuant to Article 5 of the Commission Regulation N° 2367/90 as an application within the meaning of Article 2 or a notification within the meaning of Article 4 of Council Regulation N° 17/62 as requested by the parties in their notification.
- 9) For the above reasons, the Commission has decided that the notified operation does not fall within the scope of Council Regulation N° 4064/89. This decision is adopted in application of Article 6 paragraph 1(a) of the Regulation.

For the Commission