



EUROPEAN COMMISSION  
DG Competition

*Case M.8971 – INA/PPD/Petrokemija*

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 31.7.2018



## 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 31.7.2018  
C(2018) 5249 final

PUBLIC VERSION

**To the notifying parties**

**To the Croatian National  
Competition Authority**

**Subject: Case M.8971 – INA/PPD/Petrokemija  
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 Republic of Croatia ("Croatia") and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 04.07.2018**

**Legal deadline for response of Member States: 25.07.2018**

**Legal deadline for the Commission decision under Article 4(4): 08.08.2018**

Dear Sir or Madam,

### **1. INTRODUCTION**

- (1) On 4 July 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 Croatia, the *Agencija za zaštitu tržišnog natjecanja* (the "AZTN").

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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').

- (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 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 4 July 2018.
- (4) By letter of 12 July 2018, received by the Commission on 13 July 2018, the AZTN as the competent authority of Croatia informed the Commission that it agrees with the proposed referral to Croatia.

## 2. THE PARTIES

- (5) **INA-Industrija nafte d.d. ("INA")** is a medium-sized European oil company headquartered in Croatia and controlled by MOL<sup>3</sup>. INA is comprised of several companies and is active in (i) the exploration and exploitation of oil and gas deposits; (ii) the importation of natural gas into Croatia; (iii) the refining and production of oil products through refineries located in Croatia (iv) the distribution of fuels and associated products through a chain of retail outlets and terminals; (v) the trading in crude oil and petroleum products; and (vi) the manufacture and marketing of lubricants, industrial greases and related products.
- (6) **Prvo plinarsko društvo d.o.o. ("PPD")** is a private Croatian company that is active throughout the EEA in the import, sale, supply and distribution of natural gas (amongst other things). It is owned by the Energia Naturalis Group, which has a broad spectrum of operations ranging from the distribution and supply of natural gas, renewable energy sources, trade in petroleum products, information and communication technologies to investment projects and transport.
- (7) **Petrokemija d.d. ("PK", the "Target")** is a Croatian company active *inter alia* in the production of mineral fertilisers using natural mineral raw materials, natural gas, atmospheric nitrogen and oxygen. It manufactures and sells these mineral fertilisers predominantly in Croatia.

## 3. THE OPERATION AND CONCENTRATION

- (8) The transaction in question involves the acquisition of joint control over PK by INA and PPD (INA and PPD together will hereafter be referred to as the "Parties") as per the joint participation by INA and PPD in the recapitalization of PK (the "Transaction"). This Transaction takes place in the context of the preparation of PK's restructuring and privatization following financial losses, of approximately EUR 20 million in 2017 and EUR 12 million in 2018. Currently, the Croatian government owns approximately 80% of the shares in PK, with the remainder being held by private investors.

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<sup>3</sup> MOL is an integrated international oil and gas company active across the entire crude oil and natural gas value chain. Its principal activities are (i) the exploration, production and refining of crude oil, the (ii) wholesale and (iii) retail distribution of refined oil products, (iv) the production and sale of petrochemicals, (v) the exploration and production of natural gas and (vi) the transmission of natural gas in Hungary. MOL currently owns 49.1% of shares in INA, next to the Croatian government that owns 44.8% and private and institutional investors that own the remainder of the shares.

- (9) The Parties will participate in the recapitalization of PK through the set-up of a special purpose vehicle (an "SPV") in which both will hold 50% of the shares. In turn, the SPV will hold at least 50+1% of the shares in PK (the level of the shareholding is not fixed at present, and could possibly amount up to 55%). The remaining shares in PK will be held by the government of Croatia and other private investors, owning  $\pm 26\%$  and collectively  $\pm 19\%$  respectively. Furthermore, the Parties will appoint the majority (4 out of 7) of the Supervisory Board, that decides by majority. No other shareholders will have any veto rights in relation to any strategic issues.
- (10) In view of the above, the Transaction results in the acquisition of joint control by INA and PPD over PK within the meaning of Article 3(1)(b) of the Merger Regulation.

#### 4. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>4</sup> [INA: EUR [Revenue data]; PPD: EUR [Revenue data]]. Each of them has an EU-wide turnover in excess of EUR 250 million [INA: EUR [Revenue data]; PPD: EUR [Revenue data]], 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. ASSESSMENT

##### A Relevant product markets

- (12) On the basis of the information submitted in the Reasoned Submission, the Transaction concerns the retail supply of gas to large industrial customers (upstream) and the production and sale of fertilisers (downstream).
- (13) As regards the *retail supply of gas to large industrial customers*, the Parties agree with the Commission's decision making practice<sup>5</sup> of identifying a separate product market for the retail supply of gas, further segmented into supply of gas to gas-powered electricity plants, large industrial customers, small industrial and commercial customers and households, and submit that the relevant product market is the market for the retail supply of gas to large industrial customers.
- (14) With regard to the *production and sale of fertilisers*, the Commission has previously considered distinctions between mineral and organic fertilisers, and field and speciality fertilisers. The Commission has further considered, but left open, separate product markets for N, P and K fertilisers, in turn with possible further sub-segmentations for straight and compound/blended fertilisers.<sup>6</sup> The Parties submit that for the purpose of the present case no further segmentation is needed with regard to the production and sale of fertilisers, given that natural gas is an input common to

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<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

<sup>5</sup> M.8358, Macquarie / National Grid / Gas Distribution business of National Grid, para. 18; M.7936, Petrol / Geoplin, para. 25; M.7602, Deutsche Telekom Group / MET Holding / JV, para. 10; M.6910, Gazprom / Wintershall / Target Companies, para. 65; M.5740, Gazprom / A2A / JV, para. 17; M.5449, EDF / Segebel, para. 131; M.5979, KGHM / Tauron / Wytwarzanie / JV, paras. 11, 25; M.7927, EPH / ENEL / SE, para. 33.

<sup>6</sup> M.4730, Yara / Kemira Growhow, para. 14; M.6695, Azoty Tarnów / Zakłady Azotowe Puławy, paras. 13-14.

all fertilisers and that any vertical analysis should be limited to the supply and purchase of natural gas, *i.e.* the nexus between the Parties and the Target.

## **B Relevant geographic market**

- (15) The Parties agree with the Commission's decision-making practice<sup>7</sup>, that the market for the *retail supply of gas to large industrial customers* is national in scope.
- (16) As regards the *production and sale of fertilisers*, the Commission has previously considered that the geographic scope of these markets is at least EEA-wide.<sup>8</sup> The Parties submit that the overall market for the production and sale of fertilisers is EEA-wide.

## **C Assessment**

### *Legal requirements*

- (17) 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>9</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.
- (18) On the basis of the information submitted in the Reasoned Submission, both INA and PPD are active on the market for the retail supply of gas to large industrial customers in Croatia, whilst PK is active in the production and sale of fertilisers, for which it sources natural gas as an input.<sup>10</sup>
- (19) As such, there is no horizontal overlap between the INA and PPD on the one hand and PK on the other.
- (20) The Transaction does give rise to a vertically affected market, between INA's and PPD's activities on the upstream market for the retail supply of gas to large industrial customers in Croatia,<sup>11</sup> where their 2017 market shares are [40-50]% and [40-50]% respectively, and PK's activities on the market for the production and sale of

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<sup>7</sup> M.8358, Macquarie / National Grid / Gas Distribution business of National Grid, para. 18; M.7936, Petrol / Geoplin, para. 26; M.7602, Deutsche Telekom Group / MET Holding / JV, para. 15; M.6910, Gazprom / Wintershall / Target Companies, para. 67; M.5740, Gazprom / A2A / JV, para. 22; M.5449, EDF / Segebel, para. 133; M.5979, KGHM / Tauron / Wytwarzanie / JV, paras. 31-32; M.7927, EPH / ENEL / SE, para. 35.

<sup>8</sup> M.4730, Yara / Kemira Growhow, para. 21; M.6695, Azoty Tarnów / Zakłady Azotowe Puławy, paras. 21-23; M.2524, Hydro / SQM / Rotem / JV, para. 20.

<sup>9</sup> Commission Notice on Case Referral in respect of concentrations, para. 16.

<sup>10</sup> PK is an important customer on the Croatian market for the retail supply of gas to large industrial customers, with a customer market share of [40-50]% in 2017.

<sup>11</sup> INA is not active on any other national market than Croatia. MOL is active in relation to the retail supply of gas to large industrial customers in Hungary, but has a limited market share, of approximately [5-10]%. PPD is also active in the retail supply of gas to large industrial customers in Hungary, also with a very limited market share, of [0-5]%.

fertilisers.<sup>12</sup> Given the level of these market shares on the market for the retail supply of gas to large industrial customers, the Transaction may significantly affect competition in Croatia.

- (21) PK only sources gas in Croatia for its activities in the production and sale of fertilisers. Also, there are no overlaps on the market for production and sale of fertilisers;<sup>13</sup> only PK is active on that market with less than [20-30]% market share (and any potential sub-segment of that market), competing with fertilizer companies in other Member States. As these companies are not dependent on gas supply from a Croatian gas supplier, an input foreclosure of competitors outside Croatia cannot be envisaged. As such, and given that the Transaction only results in a vertically affected market if the upstream market is the Croatian market for the retail supply of gas to large industrial customers, the principal effects of the Transaction would be restricted to Croatia. Therefore, and in view of the fact that retail supply of gas to large industrial customers has consistently been defined as (not larger than) national in scope in previous Commission decisions, the market in question presents all the characteristics of a distinct market.
- (22) In view of the foregoing, the preliminary assessment suggests that the Transaction may significantly affect competition within a Member State and that the effects of the Transaction would be restricted to Croatia. Furthermore, the markets in question present all the characteristics of a distinct market.

*Additional factors*

- (23) 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>14</sup>
- (24) Given the fact that the focus of any competitive effects of the Transaction is confined to Croatia, the AZTN seems well placed to examine this. Furthermore, the Parties submit that the AZTN has experience as regards the industry, as it has issued several opinions on the Gas Market Act and on the Regulation on the concessions for gas distribution. Also, it has assessed previous transactions involving INA, including the MOL Hungary/INA merger investigation. This was confirmed by the AZTN in its letter of 12 July 2018.
- (25) 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.
- (26) In view of the above, the AZTN appears to be the best placed authority to consider the Transaction.

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<sup>12</sup> PK's sales of fertilisers account for less than [0-5]% of all fertiliser sales in the EEA. The Parties have also confirmed that PK's market share does not exceed 30%, irrespective of the sub-segment considered.

<sup>13</sup> For completeness, PPD also trades in fertilisers on an *ad hoc* basis, so that there is technically an overlap with PK in the sale of fertilisers in Croatia. However, PPD's sales are very limited, and account for less than [0-5]% of the volume sold by PK. Therefore, this will not be further discussed.

<sup>14</sup> Commission Notice on Case Referral in respect of concentrations – para. 19.

## 6. REFERRAL

- (27) 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. Moreover, a referral appears appropriate in the present case based on the other factors to be considered.
- (28) The Commission notice on case referral in respect of concentrations<sup>15</sup> (the "notice") indicates in point 17 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..."*.
- (29) 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"*.
- (30) 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"*.
- (31) 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"*.
- (32) 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 Croatia, and that the requested referral would be consistent with points 17-23 of the notice.

## 7. CONCLUSION

- (33) For the above reasons, and given that Croatia has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Croatia's AZTN. 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>15</sup> OJ C 56, 5.3.2005, p. 2.