



EUROPEAN COMMISSION
DG Competition

***Case M.9414 - KUWAIT PETROLEUM BELGIUM / U
CAR SERVICES / VP
OIL / CERTAIN
BUSINESSES FROM
UHODA***

Only the English text is available and authentic.

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

Article 4(4)
Date: 12.08.2019



EUROPEAN COMMISSION

Brussels, 12.08.2019
C(2019) 6093 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

**To the Belgian Competition
Authority**

Subject: Case M.9414 – KUWAIT PETROLEUM BELGIUM / U CAR SERVICES / VP OIL / CERTAIN BUSINESSES FROM UHODA
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Belgium and Article 57 of the Agreement on the European Economic Area².

Date of filing: 12/07/2019

Legal deadline for response of Member States: 05/08/2019

Legal deadline for the Commission decision under Article 4(4): 19/08/2019

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 12 July 2019, 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

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').

transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of Belgium.

- (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 15 July 2019.
- (4) By letter of 24 July 2019, the Belgian Competition Authority (“BCA”) as the competent authority of Belgium informed the Commission that Belgium agrees with the proposed referral.

2. THE PARTIES AND THE CONCENTRATION

- (5) The purchaser is Kuwait Petroleum NV (Belgium) (“the Purchaser”), which belongs to the Kuwait Petroleum International group (“the Kuwait Group”). The Kuwait Group has the primary focus to refine and market fuel, lubricants and other petroleum derivatives globally. Its products are distinguished by the trademark Q8. It is active in the retail supply of motor fuel (Diesel, Super 95, Super 98 and LPG) through service stations around Europe. It has close to 5000 service stations in Europe of which 690 retail sites are in the Benelux region. In Belgium, it operates 465 stations. It has also marginal activities on the non-retail market for motor fuels in Belgium.
- (6) The target is U Car Services Sprl, VP Oil SA and certain additional businesses from Uhoda SA (“the Target Companies”) which are to be transferred to the Purchaser from Financière Saint Paul SA, Uhoda SA and Mr Stephan Uhoda. The Target Companies are only active in Belgium. They operate a network of 75 service stations mostly located in and around Liege and Limburg in Belgium. The Target Companies own 47 service stations and they also have contractual agreements to supply motor fuel to 28 third-party owned service stations. The Target purchases motor fuel from bulk suppliers, such as Esso or Total, which require the service stations where their fuel is sold to bear their brand. Consequently, the Target Companies’ service stations are currently operated under various brand names such as Esso, Shell, Texaco, Total and Q8.
- (7) The proposed transaction involves the acquisition of sole control over the Target Companies by the Purchaser, by way of the acquisition of all the shares of the Target Companies. Kuwait Petroleum NV (Belgium) and the Target Companies are hereafter referred to 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 turnover³ of more than EUR 5 billion.⁴ They have a Community-wide turnover in excess of EUR 250 million.⁵ 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

4.1. Relevant product market

- (10) On the basis of the information submitted in the Reasoned Submission, the proposed transaction mainly concerns the retail supply of road fuel in Belgium. The Parties' activities do not overlap outside Belgium.

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.⁶
- (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).⁷

Wholesale (non-retail) supply of fuel

- (13) The Commission has previously identified a market for the non-retail sale of refined fuel products.⁸ The Commission previously also considered that the non-retail sale of each refined fuel product constitutes a separate product market.⁹

4.2. Relevant geographic market

Retail supply of road fuel

- (14) 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

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

⁴ Purchaser group: EUR 13 537 million; Target Companies: EUR 259 million.

⁵ Purchaser group: EUR 12 066 million; Target Companies: EUR 259 million.

⁶ Case M.7388 *MOL / Lukoil Czech Republic*.

⁷ 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*.

⁸ 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*.

⁹ Case M.7603 *Statoil fuel and retail / Dansk fuels*.

have a more local aspect, as vehicle owners usually resort to service stations in their vicinity.¹⁰

- (15) In recent cases, the BCA has defined local markets where it used market ranges from 5 to 10 km to define a local market.¹¹

Wholesale (non-retail) supply of fuel

- (16) 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.¹²

4.3. Assessment of the referral request

4.3.1. Legal requirements

- (17) According to the Commission Notice on case referral¹³ (the “Notice”), 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:

- a) there must be indications that the concentration may significantly affect competition in a market or markets,¹⁴ and
- b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹⁵

- (18) 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*".

- (19) The proposed transaction may significantly affect competition given that both Parties own and operate numerous petrol stations in Belgium. Although at a national level, the Parties' combined market share in respect of the retail supply of road fuel is [10-20]% (in terms of the number of service stations) and [10-20]% (in terms of fuel sold), the proposed transaction would lead to horizontally affected markets if local markets are considered. On some local markets in Belgium, depending on how they

¹⁰ 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*.

¹¹ MEDE-C/C-13/0013, *EXXONMOBIL-groep / Etablissementen J. Maes Zonen NV*; MEDE-C/C-13/0014, *EXXONMOBIL-groep / G&V Energy Group*; MEDE-C/C-13/0015, *EXXONMOBIL / UHODA*; MEDE-C/C-16/0003, *Q8 PETROLEUM BELGIUM –CAPALM/ Groupe MARTENS*; MEDE-C/C-18/0031, *Etablissementen J. Maes Zonen NV / OCTA + SA/NV*; MEDE-C/C-19/0007, *Gabriels Consulting NV / Power Holding NV – Power Oil NV – BVBA Power Oil Transport*.

¹² 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*.

¹³ Commission Notice on Case Referral in respect of concentrations (OJ C 56, 5.3.2005, p. 2-23).

¹⁴ Further developed in point 17 of the Commission Notice on Case Referrals.

¹⁵ Further developed in point 18 of the Commission Notice on Case Referrals.

are defined, the Parties would have market shares of [20-30]%-[50-60]% (in terms of number of service stations). There may also be vertically affected markets (between the market for the non-retail supply of fuel and the market for the retail supply of motor fuels) if local markets are considered for retail supply. Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation appears to be met.

- (20) The markets for the retail supply of road fuel are national or smaller than national (local markets within Belgium). Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.
- (21) 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 Belgium. Furthermore, the markets in question present all the characteristics of a distinct market.

4.3.2. Additional factors

- (22) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular *“whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case”*.
- (23) 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”*.
- (24) Both these considerations appear to apply in this case. First, given that the focus of any competitive effects of the proposed transaction is confined to Belgium (the Target Companies are solely active in Belgium), the BCA appears well placed to examine the transaction. Secondly, the BCA has examined a number of transactions involving petrol stations at local level in recent years.¹⁶ 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.

4.3.3. Conclusion on referral

- (25) 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 (Belgium) which presents all the characteristics of a distinct market.

¹⁶ MEDE-C/C-13/0013, EXXONMOBIL-groep / Etablissementen J. Maes Zonen NV; MEDE-C/C-13/0014, EXXONMOBIL-groep / G&V Energy Group; MEDE-C/C-13/0015, EXXONMOBIL / UHODA; MEDE-C/C-16/0003, Q8 PETROLEUM BELGIUM –CAPALM/ Groupe MARTENS; MEDE-C/C-18/0031, Etablissementen J. Maes Zonen NV / OCTA + SA/NV; MEDE-C/C-19/0007, Gabriels Consulting NV / Power Holding NV – Power Oil NV – BVBA Power Oil Transport.

- (26) Furthermore, the requested referral would be consistent with points 17-23 of the Notice, in particular because the BCA appears to be the most appropriate authority to consider the Transaction.

5. CONCLUSION

- (27) For the above reasons, and given that Belgium has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Belgium. 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