



Brussels, 2 July 2020

## Final Report of the Hearing Officer<sup>1</sup>

### Case M.9014 — PKN Orlen/Grupa Lotos

1. On 3 July 2019, the Commission received a notification of a proposed concentration by which Polski Koncern Naftowy ORLEN Spółka Akcyjna ('Orlen') would acquire, within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004<sup>2</sup> (the 'Merger Regulation'), sole control of the whole of Grupa Lotos Spółka Akcyjna ('Lotos') (the 'Proposed Transaction'). For the purpose of this report, Orlen and Lotos are together referred to as the 'Parties'.
2. On 7 August 2019, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.
3. On 23 and 30 September and 22 November 2019, the Commission adopted four decisions pursuant to Article 11(3) of the Merger Regulation requiring the Parties to supply information that had been the object of different Commission requests sent to the Parties.<sup>3</sup> These decisions suspended the time limit referred to in Article 10(3) of the Merger Regulation pursuant to Article 9(1) of Commission Regulation (EC) 802/2004<sup>4</sup> (the 'Merger Implementing Regulation'). By letter of 2 March 2020, the Commission informed Orlen that the suspension of the time limit had come to an end on 28 February 2020 following the Parties' submission of the required information on that date.
4. On 7 April 2020, the Commission adopted a statement of objections (the 'SO'). The SO was formally notified to Orlen on 8 April 2020<sup>5</sup> and Orlen was granted a

---

<sup>1</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ('Decision 2011/695/EU').

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.

<sup>3</sup> The decision of 23 September 2019 was addressed to Orlen, the decision of 30 September 2019 was addressed to both Orlen and Lotos, and the Commission sent two separate decisions to Orlen and Lotos on 22 November 2019.

<sup>4</sup> Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p.1, as amended.

<sup>5</sup> On 7 April 2020, an (informal) advance information copy of the SO and its cover letter were sent to Orlen's lawyers.

deadline to submit its observations until 24 April 2020. On 7 April 2020, Lotos was also informed of the adoption of the SO and of the possibility to submit observations pursuant to Article 13(2) of the Merger Implementing Regulation.

5. On 8 April 2020, Orlen requested an extension of five working days to submit its observations on the SO, since it expected the collection of data and information to take more time due to the coronavirus crisis. On 14 April 2020, the Directorate-General for Competition granted such extension until 4 May 2020.
6. On 7 April 2020, Orlen obtained access to the accessible documents in the Commission's case file via the handover of a DVD. Further access to the file was given on a regular basis, as regards documents that were added to the file later. Certain data were only accessible to Orlen's economic consultants, by means of a virtual data room, to verify the conclusions that the Commission has drawn from them.<sup>6</sup> I have not received any complaint or request from the Parties regarding access to the file.
7. Between 30 September 2019 and 27 April 2020, I admitted six undertakings (competitors and/or customers of the Parties) as interested third persons in this case. The interested third persons were provided with a non-confidential version of the SO and given a time limit within which to submit their observations.
8. On 4 May 2020, Orlen submitted its written reply to the SO.
9. On the same day, Orlen formally entered into commitments vis-à-vis the Commission pursuant to Article 8(2) and 10(2) of the Merger Regulation with a view to rendering the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement. The Commission market-tested these commitments on 6 May 2020.
10. Orlen requested a formal oral hearing, which took place on 11 May 2020.<sup>7</sup>
11. On 25 May 2020, Orlen submitted revised commitments to the Commission. On 26 May 2020, these revised commitments were also market-tested.
12. On 28 May 2020, the Commission addressed a letter of facts to Orlen, informing it about additional factual elements already present in the file at the time of the SO that were not yet expressly relied on in the SO but which, on further analysis of the file, the Commission considers relevant to support its arguments, as well as about certain additional evidence brought to the Commission's attention after the adoption of the SO. Orlen submitted its reply to this letter of facts on 3 June 2020.
13. First on 22, and finally on 23 June 2020, further revised commitments (the 'Final Commitments') were submitted to the Commission.

---

<sup>6</sup> This virtual data room was organised as a substitute to the customary physical data room since, due to the ongoing coronavirus pandemic, no physical data room could be organised. The economic consultants could share a non-confidential report on their conclusions with the Parties after the Commission had confirmed that it contained no confidential information.

<sup>7</sup> Due to the ongoing coronavirus pandemic, the oral hearing was held remotely by secure encrypted videoconference.

14. In the draft decision, the Commission concludes that the Final Commitments remove the significant impediments to effective competition in the internal market or in a substantial part of it to which the Proposed Transaction would otherwise have given rise, while objections in certain relevant markets that were included in the SO have been dropped. As a result, the draft decision declares the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement, subject to full compliance with the Final Commitments.
15. In view of the above, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Wouter WILS  
Hearing Officer