



EUROPEAN COMMISSION  
DG Competition

***Case M.10310 — TAMOIL ITALIA/REPSOL ITALIA***

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 19/07/2021



## EUROPEAN COMMISSION

Brussels, 19.7.2021  
C(2021) 5504 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Tamoil Italia S.p.A.  
Via Andrea Costa 17  
20131 Milano  
Italy

Autorità Garante della Concorrenza e  
del Mercato  
Piazza Giuseppe Verdi, 6a  
00198 Roma  
Italy

**Subject: Case M.10310 — Tamoil Italia/Repsol Italia**  
**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 Italy and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 25.06.2021**

**Legal deadline for response of Member States: 16.07.2021**

**Legal deadline for the Commission decision under Article 4(4): 02.08.2021**

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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’).

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 25 June 2021, 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 proposed transaction cited above. Tamoil Italia requests the operation to be examined in its entirety by the competent authorities of Italy.
- (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 25 June 2021.
- (4) By letter of 14 July 2021, the Italian competition authority, the Autorità Garante della Concorrenza e del Mercato (“AGCM”), as the competent authority of Italy, informed the Commission that Italy agrees with the proposed referral.

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

- (5) Tamoil Italia is an Italian undertaking active in Italy in the oil industry, namely in the handling and storage, the retail and the non-retail / wholesale supply of oil products and lubricants, as well as in the supply of jet fuels in the main Italian airports. The retail supply of motor fuels is carried out through a network of service stations owned by the company or flagged with the Tamoil brand, and which is composed of about 1,360 sites. Tamoil Italia is controlled by Oilinvest (Netherlands) B.V., which is in turn controlled by Oilinvest (Holdings) N.V.
- (6) Repsol Italia is an Italian undertaking active only in Italy (except for a very marginal activity in San Marino) in the distribution, both retail – through a network of service stations – and wholesale, of oil products. Repsol Italia has a network of 275 service stations; they are mainly in Italy’s Northern regions (178 sites), with the remaining ones being located in the Centre (62 sites) and the South (34 sites) of Italy, with one additional service station located in the Republic of San Marino. Repsol Italia only operates service stations off-motorways and it does not operate any service station on motorways nor in the Italian islands. Tamoil Italia and Repsol Italia are together referred to as the “Parties”.
- (7) The proposed transaction involves the acquisition, by Tamoil Italia, of sole control over Repsol Italia by way of the acquisition of its entire issued share capital.
- (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 of more than EUR 5 billion. They have an EU-wide turnover in excess of EUR 250 million.<sup>3</sup> The undertakings do not achieve more than two-thirds of their EU-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 motor fuel in Italy.<sup>4</sup> The Parties' activities do not overlap outside Italy.
- (11) The Commission has previously defined the market for the retail supply of motor fuels as sales of motor fuels at service stations<sup>5</sup>, both branded and unbranded, in and outside an integrated network.<sup>6</sup> The relevant product market was defined as encompassing all types of motor fuels available at service stations.<sup>7</sup>
- (12) The Commission has in the past also considered a number of possible segmentations by types of petrol stations, sometimes leaving the question open and sometimes reaching a conclusion that such a segmentation was or was not justified on the basis of the specific characteristics of the market in question. In particular, the Commission has considered the possibility of segmenting the market of retail supply of motor fuels between sales at on-motorway and off-motorway stations;<sup>8</sup> between sales from regular stations and from dedicated truck stops;<sup>9</sup> between sales from marine and non-marine stations;<sup>10</sup> or between sales from manned and unmanned

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<sup>3</sup> In 2020, the Oilinvest Group had a world-wide turnover of 4,560,887,778 EUR and an EU-wide turnover of [...] EUR, and Repsol Italia had a world-wide turnover of [...] EUR and an EU-wide turnover of [...] EUR.

<sup>4</sup> The proposed transaction also gives rise to horizontal overlaps in the non-retail sale of refined fuel products and fuel cards. However, without prejudice to the AGCM's further investigation regarding this element, this does not appear to give rise to affected markets and will not be discussed further in this decision. The proposed transaction also gives rise to vertical links regarding the upstream markets for fuel storage and logistics and downstream markets for the retail supply of motor fuels for which it is submitted by the Parties that there are no affected markets and is again therefore not further discussed in this decision.

<sup>5</sup> Cases M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija, paragraph 17; M.4919 – Statoil Hydro/ConocoPhillips, paragraph 22; M.4532 – Lukoil/ConocoPhillips, paragraph 7; M.4348 – PKN/Mazeikiu, paragraph 16; M.3516 – Repsol YPF/Shell Portugal, paragraph 8; M.3291 – Preem/Skandinaviska Raffinaderi, paragraph 12.

<sup>6</sup> Cases M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija, paragraph 17; M.6167 – RWA/OMV Wame, paragraph 8; M.5637 – Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings, paragraph 26; M.5781 – Total Holdings Europe SAS/ERG SpA/JV, paragraph 16.

<sup>7</sup> Case M.9014 – PKN/Orlen Grupa Lotos, paragraph 603.

<sup>8</sup> Case M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija, paragraph 21, Case M.9014 – PKN/Orlen Grupa Lotos, paragraphs 609-626.

<sup>9</sup> Cases M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija, paragraph 22; M.7603 – Statoil Fuel and Retail/Dansk Fuels, paragraph 29, Case M.9014 – PKN/Orlen Grupa Lotos, paragraph 607.

<sup>10</sup> Case M.4532 – Lukoil/Conocophillips, paragraph 9.

stations.<sup>11</sup> Finally, the Commission has also considered the possibility of segmenting the market of retail supply of motor fuels between sales to business (B2B) customers (via a fuel card) and sales to non-business (B2C) customers.<sup>12</sup>

- (13) In its most recent decision regarding the retail supply of motor fuels, the Commission concluded that the retail supply of motor fuels should not be further segmented along the lines suggested above, with the exception of the distinction between on and off-motorway stations and between B2B and B2C customers.<sup>13</sup> In that case, on-motorway petrol stations in Poland were considered to constitute a separate market segment from off-motorway petrol stations.<sup>14</sup> The Commission in that case also considered that the retail supply of motor fuels could be further subdivided into the retail supply of fuels to B2B customers via fuel cards and the retail supply of motor fuels to other customers (B2C).<sup>15</sup>
- (14) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission considers that the relevant product market likely consists of the retail supply of motor fuels, with separate markets for on and off-motorway stations. For the purpose of this preliminary assessment, the Commission does not find it necessary to consider whether the market could be further segmented according to the supply to B2B or B2C customers.

#### **4.2. Relevant geographic market**

- (15) In its case practice the Commission has considered that the market for retail sale of motor fuel is at most national in scope<sup>16</sup> and has found that in some countries (e.g. Denmark or Poland) there are significant elements of local competition.<sup>17</sup>
- (16) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the preliminary evidence collected by the Commission suggests that there are elements of local competition. For example, both Parties regularly monitor competitive conditions at local level. Tamoil Italia [monitoring of competitive conditions]. Repsol Italia [monitoring of competitive conditions].
- (17) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission considers that the relevant geographic market is not wider than Italy and that it presents significant elements of local competition and therefore the effects of the proposed transaction should likely also be assessed at local level. Even on the widest plausible geographic market definition, the effects of the proposed transaction would be limited to Italy.

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<sup>11</sup> Cases M.7603 – Statoil Fuel and Retail/Dansk Fuels, paragraphs 30-32; M.9014 – PKN/Orlen Grupa Lotos, paragraph 606.

<sup>12</sup> Cases M.9014 – PKN Orlen / Grupa Lotos, paragraphs 627 - 634; M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ ENI Slovenija, paragraphs 23-28.

<sup>13</sup> Case M.9014 – PKN/Orlen Grupa Lotos, paragraphs 603-635.

<sup>14</sup> Case M.9014 – PKN/Orlen Grupa Lotos, paragraph 635.

<sup>15</sup> Case M.9014 – PKN/Orlen Grupa Lotos, paragraph 635.

<sup>16</sup> Case M.5796 – ENI/Mobil Oil Austria, paragraph 12.

<sup>17</sup> Cases M.9014 – PKN Orlen / Grupa Lotos, paragraph 653; M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija, paragraphs 40 and 41; M.7603 – Statoil Fuel and Retail/Dansk Fuels, paragraphs 54 to 62; M.3375 – Statoil/SDS, paragraph 20.

### 4.3. Affected markets

- (18) The proposed transaction would lead to horizontally affected markets with regard to the retail supply of motor fuel, if local markets are considered. The Parties submit that at regional level, the combined market share of the Parties would exceed 20% in two provinces, Cremona and Lodi. There would be a greater number of affected markets if catchment areas narrower than provinces were to be considered. For instance, on the basis of a driving distance radius of 20km, the Parties identified four overlaps where the merger would result in affected markets (combined share above 20%).

### 4.4. Assessment of the referral request

#### 4.4.1. Legal requirements

- (19) According to the Commission Notice on case referral<sup>18</sup> (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,<sup>19</sup> and
- b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>20</sup>

- (20) With regard to the first requirement, as set out above, the proposed transaction gives rise to affected markets, more specifically at least two local markets for the retail supply of sale of motor fuel located exclusively in Italy. Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation appears to be met.

- (21) With regard to the second requirement, as set out above, the principal effects of the proposed operation would be restricted to Italy. The Parties’ activities only overlap in Italy and the affected markets present all the characteristics of a distinct market. Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

#### 4.4.2. 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*”.

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<sup>18</sup> Commission Notice on Case Referral in respect of concentrations (OJ C 56, 5.3.2005, p. 2-23).

<sup>19</sup> Further developed in point 17 of the Commission Notice on Case Referrals.

<sup>20</sup> Further developed in point 18 of the Commission Notice on Case Referrals.

- (24) In this case, the Commission considers that given that the focus of any competitive effects of the proposed transaction is confined to Italy, the AGCM appears to be the most appropriate authority to examine the proposed transaction. The AGCM has also investigated a number of recent mergers in the sector<sup>21</sup> and as a result has substantial experience and expertise in examining the markets in question. On 14 July 2021, the AGCM informed the Commission that Italy agrees with the proposed referral.
- (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.<sup>22</sup>

#### 4.4.3. *Conclusion on referral*

- (26) 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 (Italy) which presents all the characteristics of a distinct market.
- (27) Furthermore, the requested referral would be consistent with points 19-23 of the Notice, in particular because the AGCM appears to be the most appropriate authority to consider the proposed transaction.

## 5. CONCLUSION

- (28) For the above reasons, and given that Italy has expressed its agreement, the Commission has decided to refer the proposed transaction in its entirety to be examined by Italy. 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)*  
*Olivier GUERSENT*  
*Director-General*

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<sup>21</sup> AGCM cases no. C12078 – Petrolifera Adriatica/Ramo di Azienda di ESSO Italiana (2017); C12053 – Retitalia/Ramo di Azienda di ESSO Italiana (2016); C12006 – COOP Estense (Carburanti 3.0)/Rami di Azienda e Società Varie del Gruppo CCPL (2015); C10993 – ESSO Italiana/Impianto di Distribuzione Carburanti di Co.Mev. (2011); C9451 - API/Ramo d’Azienda di Petrol Sitaf (2008); C8950 - ESSO Italiana/Ramo d’Azienda di Società di Persone (2007), C12131 - API/TotalErg (2017).

<sup>22</sup> Point 11 of the Commission Notice on Case Referrals.