EUROPEAN COMMISSION
DG Competition

Case M.10649 - PKN ORLEN / NORMBENZ / SELECTED HUNGARIAN AND SLOVAK ASSETS OF MOL

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 15/07/2022

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Polski Koncern Naftowy ORLEN S.A.
Bielańska 12
00-085 Warsaw
Poland

Subject: **Case M.10649 – PKN ORLEN / NORMBENZ / SELECTED HUNGARIAN AND SLOVAK ASSETS OF MOL**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 10 June 2022, the European Commission received notification of a proposed concentration ('the Proposed Transaction') pursuant to Article 3(1)(b) of the Council Regulation (EC) No 139/2004 by which PKN Orlen S.A. ('Orlen', Poland) will acquire sole control over Normbenz Magyarország Kft ('Normbenz', Hungary) and selected assets currently controlled by MOL Hungarian Oil and Gas Plc. ('MOL', Hungary) (Normbenz and the selected assets of MOL jointly being

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').

referred to as 'the Target') from MOL[3]. Orlen is hereafter referred to as the 'Notifying Party' and together with the Target as the 'Parties'.

1. THE PARTIES

(2) Orlen is an integrated, multi-utility enterprise that operates in Central and Eastern Europe ('CEE') and Canada. It is primarily active in the areas of extraction and refining of oil and other hydrocarbons, the production of biofuels, of petrochemicals, and of electricity (including from renewable sources), the wholesale and retail sales of motor fuels, and retail sales of fast moving consumer goods products.

(3) At the retail level, Orlen has a very developed retail fuel operation in the CEE region, with a retail customer base of 15 million people. Orlen currently owns a network of over 2,850 petrol stations across five countries in CEE in Poland, Germany, Czechia, Slovakia and Lithuania.

(4) The Target is active in the retail sale of motor fuels in service stations in Hungary (where it operates 144 service stations) and in Slovakia (where it operates 41 service stations). This is accompanied by the sale of fast moving consumer goods, which is ancillary to the primary activity of service stations. Furthermore, the Target offers car wash services in 34 of the service stations in Hungary and in 11 service stations in Slovakia.

2. THE OPERATION

(5) The Proposed Transaction comprises the acquisition by Orlen of sole control over:

(a) selected assets currently controlled directly or indirectly by MOL, which are the basis for operation of 65 service stations in Hungary (the 'MOL Hungarian Business');

(b) Normbenz, a Hungarian limited liability company operating 79 service stations in Hungary under the Lukoil brand, which will be acquired by MOL (directly or through its subsidiary) from Norm Benzinkút Kft immediately prior to Orlen's acquisition of the Target as an intermediate step in the present transaction. MOL will only acquire Normbenz in order to transfer it to Orlen as part of the Proposed Transation ;

(c) selected assets currently controlled directly or indirectly by MOL, which are the basis for operation of 35 service stations in Slovakia (the 'MOL Slovak Business'); and

(d) selected assets, which are the basis for operation of six service stations in Slovakia under the Lukoil brand, which were acquired on 2 May 2022 by MOL (directly or through its subsidiary) from Normbenz Slovakia s.r.o. (the 'Added Slovak Business').

(6) As described above, the Proposed Transaction would be executed via a series of steps, one of which is the acquisition of Normbenz by MOL prior to its resale to Orlen. These interrelated steps are part of a single transaction, the aim of which is

[3] Publication in the Official Journal of the European Union No C234, 17.6.2022, p. 7.

the acquisition by Orlen of a network from MOL and Normbenz. That these form a single transaction is confirmed by the share purchase agreements entered into between Orlen and MOL and between MOL and Normbenz, which state that each of these steps is conditional on the other.[4]

(7) The Proposed Transaction will be implemented on the basis of the Share and Asset Purchase Agreement entered into between Orlen and MOL on 12 January 2022 (the 'Share Purchase Agreement'). The Target's shares and assets will be transferred to: (i) ORLEN Unipetrol RPA s.r.o., a subsidiary of Orlen (for Normbenz); (ii) Normbenz, after its acquisition by Orlen (for the MOL Hungarian Business); and (iii) ORLEN Unipetrol Slovakia s.r.o., another Orlen subsidiary (for the MOL Slovak Business and the Added Slovak Business).

3. UNION DIMENSION

(8) The Proposed Transaction has an EU dimension pursuant to Article 1(2) of the Merger regulation. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Orlen: EUR [20-30] billion; Target: EUR [250-750] million). Each of them has an EU-wide turnover in excess of EUR 250 million in the last respective full financial year (Orlen: EUR [20-30] billion; Target: EUR [250-750] million). Although the Target achieved more than two-thirds of its turnover in Hungary, Orlen did not.

4. RELEVANT MARKETS

(9) The Proposed Transaction concerns the retail sale of motor fuels at service stations in Hungary and in Slovakia. It gives rise to the following horizontal overlaps and vertical relationships between Orlen and the Target:

(a) a horizontal overlap on the markets for the retail sale of motor fuels in Slovakia;

(b) a horizontal overlap on the markets for the retail sale of motor fuels in Hungary (through the combination of Normbenz and the MOL Hungarian Business);

(c) a vertical relationship between Orlen's activities on wholesale fuel markets in Hungary and the Target's activities on the retail fuel markets in Hungary; and

(d) a vertical relationship between Orlen's activities on wholesale fuel markets in Slovakia and the Target's activities on the retail fuel markets in Slovakia.

(10) As the two vertical relationships between the Parties' activities would not give rise to any affected markets in Hungary or Slovakia,[5] these vertical relationships with the market for the wholesale supply of fuel will not be further discussed.

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4 Form CO, Schedule 3.1.3.a, clause 5.1.4; Schedule 5.1., clause 5.5 (ii)

5 The Parties have combined market shares of approximately [5-10]% and [10-20]% on the downstream retail B2B and B2C markets respectively in Hungary and below 10% on both segments also in Slovakia. On the upstream level, Orlen's market shares for the wholesale supply of diesel and gasoline in Hungary are below 5%, while in Slovakia Orlen has market shares of [10-20]% for diesel and [10-20]% for gasoline.

4.1. Retail supply of motor fuels in Hungary and Slovakia

4.1.1. Product market definition

4.1.1.1. The Commission's decisional practice

(11) The Commission has considered in previous decisions that the market for the retail supply of motor fuel products constitutes a distinct relevant product market.[6]

(12) The Commission has concluded that the retail supply of motor fuels should not be further sub-segmented by type of fuel product (diesel, gasoline and automotive liquefied petroleum gas ('LPG')),[7] and it has defined the market for the retail sales of motor fuels as encompassing the sales of all motor fuels at service stations.[8] The Commission previously noted that, although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), these are usually available at the distribution level at the same point of sales (i.e. the service stations) and are therefore substitutable from the supply-side perspective.[9] The Commission has assessed in the past whether there exists a market for the retail sale of automotive LPG separate from that of retail sales of other motor fuels, however, it ultimately left the question open.[10]

(13) Moreover, the Commission has considered in previous decisions a number of possible segmentations by types of petrol stations, sometimes leaving the question open, and in some cases reaching a conclusion that such a segmentation was or was not justified on the basis of the specific characteristics of the geographic market in question. In particular, the Commission has considered the possibility of segmenting the market of retail sales of motor fuels between sales at on-motorway and off-motorway stations;[11] between sales from regular stations and from dedicated truck stops;[12] between sales from marine and non-marine stations;[13] or between sales from manned and unmanned stations.[14]

(14) Regarding a possible segmentation between on- and off-motorway stations, the Commission has in two recent cases (one of which concerned the Hungarian market) ultimately decided against such segmentation in view of the particularities of those cases (such as the non-existence of tolls or insignificant price

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6 M.4919 – *StatoilHydro / ConocoPhillips*; M.4545 – *Statoil / Hydro*; M.4532 – *Lukoil / ConocoPhillips*; M.3516 – *Repsol / Shell Portugal*.

7 M.9014 – *PKN Orlen / Grupa Lotos*.

8 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*; M.4919 – *Statoil Hydro / ConocoPhillips*; M.4348 – *PKN / Mazeikiu*; M.3516 – *Repsol YPF / Shell Portugal*; M.3291 – *Preem / Skandinaviska Raffinaderi*.

9 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*; M.4919 – *Statoil Hydro / ConocoPhillips*; M.3516 – *Repsol YPF / Shell Portugal*; M.3291 – *Preem / Skandinaviska Raffinaderi*.

10 M.7680 – *DCC Group / Butagaz*; M.7311 – *MOL / Eni Ceska / Eni Romania / Eni Slovensko*; M.5005 *Galp Energia / Exxonmobil Iberia*; /M.7161 – D*cc Energy / Qstar Försäljning / Qstar / Card Network Solutions*.

11 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*.

12 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*; M.7603 – *Statoil Fuel and Retail / Dansk Fuels*.

13 M.4532 – *Lukoil / ConocoPhillips*.

14 M.7603 – *Statoil Fuel and Retail / Dansk Fuels*.

differences).[15] In a previous case, however, it had considered that on-motorway stations constitute a separate market from that for off-motorway stations in view of the notable differences in competitive conditions which characterise the sale of fuels by the two categories of service stations (such as the existence of tolls, price differences, differences in commercial offer, distinct conditions of entry).[16] In *PKN Orlen / Grupa Lotos*, the Commission considered that on-motorway petrol stations (including those located on toll and non-toll motorways and expressways) likely constituted a distinct market segment in Poland, but ultimately left the exact market definition open.[17]

(15) Finally, the Commission has also considered a segmentation for the retail supply of motor fuels between sales to B2B customers (via a fuel card) and to B2C customers. In *PKN Orlen / Grupa Lotos*, the Commission concluded that such a segmentation was appropriate mainly because of the different price setting/levels, diverse needs of each group of customers (notably in terms of network coverage, of number of on-motorways stations, toll payment system, online invoicing tools, and payment conditions).[18]

4.1.1.2. The Notifying Party's views

(16) The Notifying Party submits, in line with the Commission's decisional practice examining the Hungarian and Slovak markets,[19] that the market for the retail sale of motor fuels includes all types of motor fuels available at service stations (including LPG). The Notifying Party also notes that in previous decisions concerning Hungary and Slovakia,[20] the Commission concluded that the market should not be subdivided between on- and off-motorway service stations. It submits that circumstances in the Hungarian and Slovak market have not significantly changed since these decisions were adopted in 2016 and 2014 respectively.

(17) The Notifying Party submits that it would not be relevant to draw distinctions between regular stations and dedicated truck stops in the present case, as the Parties do not operate any dedicated truck stops in Hungary.

(18) As regards a possible split between B2B and B2C sales, the Notifying Party submits that the precise market definition can be left open as the Proposed Transaction could only give rise to an affected market on the narrowest plausible market definition, namely B2C retail sales (when examined at the local level).

4.1.1.3. The Commission's assessment

(19) The Commission's market investigation supports the view that the retail supply of motor fuels encompasses all types of motor fuels available at stations, including

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15 M.7603 – *Statoil Fuel and Retail / Dansk Fuels*, paragraph 28; M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*, paragraph 21.

16 M.1628 – *TotalFina / Elf*, paragraph 159.

17 M.9014 – *PKN Orlen / Grupa Lotos*, recital 626.

18 M.9014 – *PKN Orlen / Grupa Lotos*, recitals 627 and ff.

19 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija ;* M.7311 – *MOL / ENI Ceska / ENI Romania / ENI Slovensko*.

20 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*.

LPG, with all respondents unanimously confirming this point.[21] The Commission has not considered whether dedicated automotive LPG stations belong in the same market in the present case as no additional affected markets would arise.

(20) For the purpose of the present case, the Commission will leave open a possible sub-segmentation between on and off-motorway stations, given that neither approach would give rise to competition concerns. Given that affected markets only arise on local markets comprising off-motorway stations, only the off-motorway stations (i.e. the narrowest plausible segment) will be further discussed in this decision.

(21) The market investigation has also confirmed that B2B and B2C sales belong to distinct markets, with all but one respondents confirming this point.[22] Respondents pointed to the different customer structures in both segments, and to the difference in customers' needs. One respondent explained that while B2B customers primarily decide based on price and on the locations of the stations which are members of the network, B2C customers tend to be more demanding, and to expect a variety of other products and services to be available at petrol stations, and to place importance on the cleanliness of the facilities and the friendliness of the staff.[23] Given that the Proposed Transaction does not result in an affected market as regards B2B customers, the retail sale of motor fuels to B2B customers will not be further discussed in this Decision.

(22) In conclusion, the Commission will only assess the impact of the Proposed Transaction on the market for the retail sale of fuel to B2C customers at off-motorway stations.

4.1.2. Geographic market definition

4.1.2.1. The Commission's decisional practice

(23) The Commission previously considered that the market for retail sale of motor fuel products to B2C customers is characterised by competition taking place at both the national[24] and local level.[25]

(24) In *MOL/ENI Ceska/ENI Romania/ENI Slovensko*,[26] the Commission had considered the retail market to be national given that general guidelines on pricing and all advertising and promotional activity were decided at national level.

(25) In later cases, the Commission confirmed that the market for retail sale of motor fuels to B2C customers is national in scope, acknowledging however that these markets have a local element, as vehicle owners usually resort to fuel stations in

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21 Replies to eQuestionnaire 1, Retail supply of motor fuels in Hungary and Slovakia, Question 5.

22 Replies to eQuestionnaire 1, Retail supply of motor fuels in Hungary and Slovakia, Question 3.

23 Replies to eQuestionnaire 1, Retail supply of motor fuels in Hungary and Slovakia, Question 3.

24 M.4919 – *StatoilHydro / ConocoPhillips*, paragraph 28; M.4532 – *Lukoil / ConocoPhillips*, paragraph 17; M.3291 – *Preem / Skandinaviska Raffinaderi*; M.3375 – *Statoil/SDS*, paragraph 20; M.3543 – *PKN Orlen / Unipetrol*; M.3516 – *Repsol / Shell Portugal*, paragraphs 16-18.

25 M.4919 – *StatoilHydro / ConocoPhillips*, paragraphs 26-29; M.6167 – *RWA / OMV Warme* paragraphs 12-15; M.5005 – *Galp Energia / ExxonMobil Iberia*, paragraphs 26-28.

26 M.7311 – *MOL ENI Česká / ENI Romania / ENI Slovensko*.

their vicinity.[27] In *PKN Orlen / Grupa Lotos* and in *STATOIL FUEL AND RETAIL / DANSK FUELS*, with regard in particular to B2C customers, the Commission considered that competition conditions in Poland and Denmark were sufficiently homogeneous to conclude on a national market, taking into account the local elements of competition in its competitive assessment.[28]

(26) The Commission has previously applied two different types of analysis in assessing local competition between fuel retail networks: the so-called 'presence-based approach' on the one hand and the analysis of monitoring data on the other.[29]

(27) The presence-based approach is premised on the assumption that local competition between retail stations can be indirectly observed by virtue of physical proximity between stations. The analysis is carried out by defining isochrones centred around each individual retail station of the respective Party's retail network. The radius of the isochrone is assumed to encapsulate the stations that compete with the station in question. The appropriate radius may depend on the particularities of respective local areas and will most likely vary between, for example, urban and rural areas. Areas of concern are assumed to arise in catchment areas where the Parties' stations overlap and face few, if any, other competitors.

(28) In *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenij*, and *PKN Orlen / Grupa Lotos* for example, the Commission's approach was to split retail stations in three groups (city, suburban and rural) depending on the area type in which they are located and to define separate catchment area radii per area type of station based on driving distances (2.5 km, 5km, and 20 km, respectively).[30]

(29) The analysis of a network's monitoring data depends instead on the usual business practice of retail stations of monitoring the price movements of competing stations in their vicinity. This amounts to a direct observation of the competitive constraints exercised on the Parties' retail stations by competing ones.

4.1.2.2. The Notifying Party's views

(30) The Notifying Party agrees with the approach followed by the Commission in previous decisions of considering that the market for the retail sale of motor fuels to B2C customers should be defined as national, with competition also taking place at a local level.

4.1.2.3. The Commission's assessment

(31) The Commission considers that there are no reasons to depart from the approach taken in previous cases, such that the market for the retail supply of motor fuels is national, with a local dimension for B2C customers.

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27 M.9414 – *Kuwait Petroleum Belgium / U Car Services / VP Oil / Certain Businesses from Uhoda*; M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*.

28 M.9014 – *PKN Orlen / Grupa Lotos*, paragraphs 646 and ff.; M.7603 – *Statoil Fuel and Retail / Dansk Fuels*, paragraphs 54 and ff.

29 M.7603 – *Statoil Fuel and Retail / Dansk Fuels*, paragraphs 135-141; M.9014 – *PKN Orlen / Grupa Lotos*, paragraphs 760 ff.

30 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija* ; M.9014 – *PKN Orlen / Grupa Lotos*.

(32) As regards the local level, the Commission's market investigation in the present case suggests that the motor fuel retail supply of motor fuels in Slovakia and Hungary has a significant local dimension for B2C customers. For the purpose of assessing the local dimension of competition, a majority of respondents confirmed that isochrones based on driving distances of 2.5 km, 5 km and 20 km in cities, suburban areas and rural areas respectively reflect the distance within which motorists consider competing alternatives.[31]

(33) For the purpose of this decision, the Commission considers that the market for the retail sale of motor fuels to B2C customers in Hungary and Slovakia is national in scope with local elements.

(34) Given the absence of affected markets at a national level, the Commission will only assess competition concerns at the local level. It will examine local areas where the Parties' stations overlap, using isochrones based on driving distances of 2.5 km, 5 km and 20 km in cities, suburban areas and rural areas respectively.

5. COMPETITIVE ASSESSMENT

(35) The Proposed Transaction gives rise to horizontally affected markets for the retail supply of motor fuels to B2C customers in Hungary and Slovakia, at the local level (off-motorways). There are no affected markets at the national level, the Parties having combined market shares of approximately [5-10]% and [10-20]% on the B2B and B2C markets respectively in Hungary[32] and below 10% on both segments also in Slovakia.

5.1. Analytical framework

(36) The Commission has analysed the Proposed Transaction taking into account the national and local dimension of the retail market as defined in the Commission's previous decisions. In order to assess the local elements of the competition, the Commission has used both a presence-based approach and an approach based on monitoring data in previous decisions.

(37) The monitoring approach takes into account that oil companies monitor each other on the retail market and determine the actual pump price by modifying the national list price accordingly. The Parties provided partial monitoring data. In Hungary, they were able to provide data indicating [price monitoring policy]. In Slovakia, [price monitoring policy]. Orlen [price monitoring policy]. The Parties did however provide data indicating [price monitoring policy].

(38) The monitoring approach has the benefit of reflecting the day-to-day business decisions of the Parties in terms of which sites are most relevant for informing local pricing decisions. However, the monitoring approach does not account for indirect constraints from other competing sites in direct proximity or further away which are not directly monitored, but which are monitored by competitors' sites which the Parties monitor.

31 Replies to eQuestionnaire 1, Retail supply of motor fuels in Hungary and Slovakia, Questions 9, 10 and 11.

32 Form CO, paragraph 114.

(39) In the present case, given the limitations around the available monitoring data, the Commission has relied on the presence-based approach, taking local competition into account by examining isochrones/catchment areas created by the driving distance around each party's stations, taking driving distances of 2.5 km in cities, 5 km in suburban areas and 20 km in rural areas.

5.2. Affected markets

(40) Based on the presence-based approach described above, the Notifying Party has identified seven local areas where the Transaction would give rise to affected markets:

Table 1 – Overview of the Parties' overlapping activities in local areas giving rise to market shares above 20%

Name	Local area category	Current market share (presence-based)			Orlen share post-transaction (presence-based)	Players pre transaction (including the Parties)	Players post-transaction (including Orlen)
		MOL	Normbenz	Orlen			
Zone #1 - Balatonkeresztúr	Rural	[30-40[%	[10-20]%	[0-5]%	[20-30]%	5	5
Zone #2 - Budapest	City	[10-20]%	[10-20]%	[0-5]%	[30-40[%	5	4
Zone #4 - Veszprém	City	[30-40]%	[10-20]%	[0-5]%	[20-30]%	4	4
Zone #9 - Nitra and Hlohovec Jaštěr	Rural	[20-30]%	[0-5]%	[5-10]%	[20-30]%	9	9
Zone #10 - Prešov	Suburban	[20-30]%	[0-5]%	[10-20]%	[20-30]%	8	8
Zone #11 - Košice	City	[20-30]%	[0-5]%	[10-20]%	[20-30]%	6	6
Zone #12 - Bánská Bystrica	City	[20-30]%	[20-30]%	[20-30]%	[40-50]%	5	4

Source: Form CO, Schedule 7.

(41) Among the overlaps identified in Table 1, Orlen's market share would remain below 40% in all but one area (Bánská Bystrica).

(42) However, the Commission considers that the Proposed Transaction would not give rise to competition concerns in any of the areas identified above (including Bánská Bystrica) for the reasons stated below.

5.3. No competition concerns in horizontally affected markets

(43) *First*, at least four competitors (*i.e.*, different entities owning and/or operating competing service stations) remain in each area post-Transaction. The Commission has considered in previous cases that concerns may arise in local areas where three or fewer competitors remain post-transaction.[33]

(44) *Second*, in each of the local areas there remain strong competitors post-Transaction, including the leading national brands MOL/Slovnaft (with national market shares of [20-30]% in Hungary and [20-30]% in Slovakia by number of stations) and also international brands such as Shell ([10-20]% in Hungary, [5-10]% in Slovakia by number of stations) and OMV ([10-20]% in Hungary, [10-20]% in Slovakia by number of stations).[34] In Bánská Bystrica Orlen would compete with MOL and OMV, as well as one smaller competitor (Tesco) (with each of these having one station each, or [20-30]% by number of stations). Overall, a majority of respondents to the Commission's market investigation expect price levels and constraints to remain unchanged following the Proposed Transaction, as customers have sufficient alternative suppliers across the Hungarian and Slovakian territory.[35]

(45) *Third*, in all but two of the areas identified above, the Proposed Transaction would result in lower concentration in the local area and in a lower (or unchanged) market share (by number of stations) for the largest operator.[36] In most areas, this is due to the fact that MOL's (which is most often the largest operator) market share would be reduced. In Zone #2 Budapest, there would be an increase in concentration, though Orlen's market share post-Transaction would match that of Shell, at [30-40]%. Only in Bánská Bystrica would the Proposed Transaction give rise to an increased market share for the market leader, from [20-30]% pre-transaction to [40-50]% for Orlen post-Transaction. Besides, Orlen, three competitors would remain in that area post-Transaction however, of which two (MOL and OMV, with [20-30]% each) are also important competitors at a national level.

(46) *Fourth*, the Commission has, besides the number of stations, also taken into account the relative size of the stations in the zones identified above, as measured by the number of tanks and pumps at each station, and concluded that the presence-based market shares seem to accurately reflect (or at least not to underestimate) the Parties' importance in each area, and that the Parties do not appear to have significantly larger stations than their competitors.[37] In Budapest, the Parties' combined market share by number of pumps would be [30-40]% (compared to [30-40]% on a presence-based approach), while in Bánská Bystrica the figure would be [20-30]% (compared to [40-50]% on a presence-based approach).

(47) Finally, no complaints regarding the impact of the Proposed Transaction due to horizontal overlaps at a local level were submitted to the Commission.

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33 M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*, paragraphs 81-83; M.9014 – *PKN Orlen / Grupa Lotos*, paragraph 795.

34 Form CO, paragraphs 110 and 122.

35 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Questions 20 and 24.

36 Form CO, Schedule 7. The Herfindahl–Hirschman index would be lower Post-Transaction in all areas, with the exception of Zone #2 Budapest (where it would increase from 2 222 to 2 778) and Zone #12 - Bánská Bystrica (from 2000 to 2800).

37 Form CO, Schedule 7.

(48) In conclusion, the Proposed Transaction would not raise competition concerns as a result of horizontal effects as regards the retail supply of fuels off-motorways to B2C customers in Hungary or Slovakia.

5.4. No other concerns

(49) The Commission received a complaint regarding the cumulative impact of the Proposed Transaction and of a separate transaction whereby MOL would acquire a network of petrol stations belonging to Grupa Lotos S.A. ('Lotos') from Orlen in Poland (the '*MOL/Lotos* Transaction').[38] The Lotos network being acquired by MOL in Poland is being sold in the context of the Commission's approval, by decision of 14 July 2020, of the acquisition by Orlen of Lotos, conditional on a package of commitments submitted by Orlen and Lotos.[39]

(50) The complainant expressed concerns that a possible effect of these transactions would be to reduce competition between Orlen and MOL, and that their cumulative impact would be to undermine the incentives of Orlen and MOL to compete on fuel markets in Central and Eastern Europe.

(51) On 14 June 2022, the Commission adopted a decision in that case approving MOL as a suitable purchaser for the Lotos retail network.[40] The Commission considered that MOL was independent from Orlen; that it possessed the financial resources, proven expertise and incentive to maintain and develop the Target as a viable and active competitor; and that the acquisition by MOL of the Target would not create *prima facie* competition concerns.

(52) In reaching the conclusion that MOL is independent of Orlen, the Commission decision took into account the fact that MOL will source a significant part of its fuel needs from Orlen in Poland in order to supply the Lotos retail network, and that Orlen had agreed to acquire a network of stations in Hungary and Slovakia from MOL. In its decision, the Commission concluded that the existence of these factors was unlikely to diminish MOL and Orlen's incentives to compete.

(53) The combined effect of the Proposed Transaction and of the *MOL/Lotos* transaction amounts to an asset swap between Orlen and MOL, allowing MOL to expand its presence on the Polish retail market and Orlen to expand on the Hungarian and Slovak retails markets. Both transactions involve the purchaser (MOL on the Polish market and Orlen on the Slovakian and Hungarian markets) being dependent on the other party for wholesale fuel supplies in the country. Just as MOL's stations in Poland would initially be almost entirely supplied by Orlen, Orlen's stations in Hungary [supply policy]. The Commission has assessed whether this arrangement, whereby both Orlen and MOL will significantly depend on each other to supply fuel to their retail businesses, could dampen their incentives to compete.

(54) When accepting the commitments entered into by Orlen and Lotos in the context of case M.9014 *PKN Orlen / Grupa Lotos*, the Commission considered it essential that the buyer of the Lotos Paliwa retail business should have a guaranteed source

38 Case M.10652 – *MOL / Lotos Paliwa*.

39 M.9014 – *PKN Orlen / Grupa Lotos*, decision of 14 July 2020.

40 M.9014 *PKN Orlen / Grupa Lotos*, Approval of Saudi Aramco, Rossi, Unimot and MOL as purchasers of the respective Divestment Businesses, paragraphs 97-104.

of supply from Orlen for the entirety of its needs for a period of five to eight years.[41] These supplies were to be made on standard market terms, with reference to industry benchmarks. The buyer of the Lotos retail network would in this manner benefit from a secure source of supply at favourable prices, allowing it to establish itself as a competitor on the Polish retail market. Therefore, the Commission does not consider that the fact that MOL will rely on Orlen for a significant part (and perhaps the totality) of its retail needs in Poland for the above-mentioned period is such as to raise competition concerns.

(55) There is also a possibility that the asset swap itself could have a chilling effect on competition by encouraging tacit coordination between MOL and Orlen in Poland, Hungary and Slovakia, whereby MOL and Orlen would have the means to retaliate against each other in case either of them were to price too aggressively on the other's home market.

(56) The Commission generally considers that coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.[42] In addition, for coordination to be sustainable, three conditions must be met. First, the coordinating firms must be capable of monitoring whether the terms of the coordination are adhered to. Second, the coordinating firms must have some credible deterrent mechanism that can be activated if deviation is detected. Third, the reaction of outsiders not participating in the coordination should not be able to jeopardise the results expected from the coordination.[43]

(57) Tacit coordination would therefore require that MOL and Orlen have such elevated market positions on their respective retail markets that no other retail competitors could disrupt that coordinated course of action. Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetric.[44] Whilst both MOL and Orlen will continue to be the leading players in respectively Hungary and Poland, there are in both markets other established retail market players that will compete on prices in order to gain market share. In addition, the respective market positions of Orlen and MOL, as well as their market positioning, will show significant asymmetry, with MOL being a minor player in Poland (with a market share below [5-10]%, compared with Orlen's [30-40]%) and Orlen a comparably small player in Slovakia (<5%, compared with MOL's share of [30-40]%) and Hungary ([5-10]% compared with MOL's share of [40-50]%).[45]

(58) Asymmetry does not contribute to facilitating a successful and sustained coordination. Indeed, the asymmetric position of Orlen and MOL makes a possible agreement on a common pricing policy unlikely, as a result of which parties may want to gain market share through competition. As such, it is unlikely that the swap

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41 M.9014 – *PKN Orlen / Grupa Lotos, Annex 2 Commitments*, paragraph 100.

42 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentration between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004, paragraph 41.

43 Case T-342/99, *Airtours v Commission*, [2002] ECR II-2585, paragraph 62.

44 Horizontal Merger Guidelines, paragraph 48; Case T-102/96, Gencor v Commission, [1999] ECR II-753, paragraph 222.

45 The shares by volume are provided on the combined B2B and B2C retail market, but are not meaningfully different when broken down between those segments).

arrangement itself could diminish the incentive of MOL and Orlen to compete against each other.

(59) For the reasons stated above, the Commission considers that the Transaction does not result in competition concerns as a result of coordinated effects in either of the markets assessed in the present decision where both Orlen and MOL are active.

6. CONCLUSION

(60) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President