EUROPEAN COMMISSION
DG Competition

# *Case M.10652 - MOL / LOTOS PALIWA*

Only the English text is available and authentic.

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

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

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EUROPEAN COMMISSION

Brussels, 15.07.2022
C(2022) 5170 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MOL Hungarian Oil and Gas Plc.
Oktoberhuszonharmadika utca 23
1117, Budapest,
Hungary

**Subject:** **Case M.10652 – MOL / LOTOS PALIWA**
**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 ('the Merger Regulation') by which MOL Hungarian Oil and Gas Plc. ('MOL', Hungary) will acquire sole control over LOTOS Paliwa Sp. z o.o. ('Lotos Paliwa' or 'the Target', Poland) from Grupa LOTOS S.A.[3] MOL is hereafter referred to as the 'Notifying Party' and together with the Target as the 'Parties'.

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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").

3 Publication in the Official Journal of the European Union No C236, 20.6.2022, p. 104.

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## 1. THE PARTIES

(2) MOL and its affiliated entities ('MOL Group') is a Central Eastern European ('CEE') integrated oil and gas corporation headquartered in Budapest, Hungary. MOL Group operates in over 30 countries and employs 25,000 people worldwide. It is active upstream and downstream in the oil sector, with activities in exploration, extraction, refining, and wholesale and retail supply of fuels.

(3) At the retail level, MOL Group has developed retail fuel operations in the CEE region, with a 10 million retail customer base and one million daily transactions. MOL Group currently owns a network of nearly 2 000 petrol stations under six well-established brands across nine countries in CEE. MOL, Slovnaft, INA, Tifon, Energopetrol and PapOil are all brands within MOL Group having a presence on the Croatian, Hungarian, Slovakian, Bosnian, Czech, Romanian, Slovenian, Serbian, Montenegrin and Polish markets.

(4) Lotos Paliwa manages a network of petrol stations across Poland under the 'Lotos' brand, 417 of which are the subject of the Proposed Transaction. The main activities of Lotos Paliwa include retail trade with consumers as well as management and development of the fuel station retail network.

## 2. THE OPERATION

(5) By decision of 14 July 2020 adopted in application of Article 8(2) of the Merger Regulation, the Commission declared the operation by which Polski Koncern Naftowy ORLEN S.A., ('Orlen', Poland) acquired within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Grupa Lotos S.A. ('Lotos', Poland) compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by Orlen and Lotos.[4]

(6) In particular, in order to remove the competition concerns identified in the Commission's decision in that case, Orlen and Lotos committed to divest, or procure the divestiture of several businesses. Among other businesses, Orlen and Lotos committed to divest 389 Lotos petrol stations, amounting to approximately 80% of the Lotos retail network.[5]

(7) In application of these commitments, the Proposed Transaction consists in the acquisition of the retail activities of Lotos Paliwa by MOL, who will acquire 100% of the shares in that business from Grupa Lotos.

(8) For completeness, Lotos Paliwa is also currently active in the wholesale supply of fuels in Poland. However, prior to the Proposed Transaction, these wholesale activities will be split from Lotos Paliwa to be acquired by a separate purchaser. Following this demerger, Lotos Paliwa will hold only the assets related to the operation of the network of 417 service stations which are being acquired by MOL, while the remainder will be acquired by Orlen.

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

5 The Proposed Transaction however involves a slightly higher number of stations, 417.

## 3. UNION DIMENSION

(9) The 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 5 000 million (MOL Group: EUR 16 600 million; Target: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million in the last respective full financial year (MOL Group: EUR […] million; Target: EUR […] million). Although the Target realised more than 2/3 of its turnover in Poland, MOL did not.

## 4. RELEVANT MARKETS

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

(a) a horizontal overlap on the market for the retail sale of motor fuels in Poland;

(b) a vertical relationship between MOL's activities on wholesale fuel markets in Poland and the Target's activities on the retail market in Poland.

(11) As the vertical relationships between the Parties' activities would not give rise to any affected markets in Poland, these vertical relationships with the market for the wholesale supply of fuel will not be further discussed.

### 4.1. Retail supply of motor fuels in Poland

#### *4.1.1. Product market definition*

4.1.1.1. The Commission's decisional practice

(12) 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]

(13) 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 sales of 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 previous decisions whether there

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*.

exists a market for the retail sales of automotive LPG separate from that of retail sales of other motor fuels, however, it ultimately left the question open.[10]

(14) Moreover, the Commission considered in previous decisions a number of possible segmentations by type of petrol stations, sometimes leaving the question open, in some cases 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 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]

(15) Regarding a possible segmentation between on- and off-motorway stations, the Commission has in two recent cases ultimately decided against such segmentation in view of the particularities of those cases (such as the non-existence of tolls or insignificant price differences).[15] In a previous decision, however, it 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 it ultimately left the exact market definition open.[17]

(16) 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, payment conditions).[18]

4.1.1.2. The Notifying Party's views

(17) The Notifying Party submits, first, that a segmentation of the market between on- and off-motorway service stations is not relevant for the Proposed Transaction as

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*.

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.

MOL is not active in the on-motorway segment in Poland. The precise market definition can therefore be left open in this regard.

(18) The Notifying Party submits, second, that circumstances in the Polish market justify a segmentation between B2B and B2C sales.

(19) The Notifying Party also notes that non-fuel sales at retail fuel stations should not be considered as a separate market as they are ancillary to the retail fuel market.

4.1.1.3. The Commission's assessment

(20) First, 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 LPG, with all respondents unanimously confirming this point.[19] However, as regards LPG the precise segmentation can be left open as no affected markets would arise on a potential segment for the sale of LPG.

(21) 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.

(22) The market investigation has also confirmed that B2B and B2C sales belong to distinct markets.[20] One respondent noted that "[t]*he B2B and B2C markets* [are] *characterized by a different offer of products and services, and thus* require *a different sales strategy and activities*". Another respondent pointed to different preferences of B2B customers who determine their preferred supplier based on "*having access to* [a] *large network of stations, and having access to stations along transit routes*" while B2C customers "*tend to view the retail market more as a local market, than national one*". Other respondents pointed to differences in prices offered to B2B compared to B2C customers.[21] 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.

(23) 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

(24) 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[22] and local level.[23]

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19 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 4.

20 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 3.

21 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 3.1.

22 M.7311 – *MOL ENI Česká / ENI Romania / ENI Slovensko*; M.4919 – *StatoilHydro / ConocoPhillips*, paragraph 28; M.4532 – *Lukoil / ConocoPhillips*, paragraph 17; M.3291 – *Preem / Skandinaviska*

(25) This approach was also followed in recent cases, where 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 their vicinity.[24] In *PKN Orlen / Grupa Lotos*, with regard in particular to B2C customers, the Commission considered that competition conditions in Poland were sufficiently homogeneous to conclude on a national market, taking into account the local elements of competition in its competitive assessment.[25]

(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 a network's monitoring data on the other.[26]

(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 *PKN Orlen / Grupa Lotos* for example, the Commission's approach was to split retail stations in three groups (urban, suburban and rural) depending on the area type in which they are located and to define separate catchment area radii per area type based on driving distances (2.5 km, 5km, and 20 km, respectively).[27]

(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 submits that the geographic scope of the market for the retail sale of motor fuel products to B2C customers should be defined as national. It nevertheless provides market data also on a local level, in line with the

*Raffinaderi*; M.3375 – *Statoil/SDS*, paragraph 20; M.3543 – *PKN Orlen / Unipetrol*; M.3516 – *Repsol / Shell Portugal*, paragraphs 16-18.

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

24 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*.

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

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

27 M.9014 – *PKN Orlen / Grupa Lotos*. See also M.7849 – *MOL Hungarian Oil and Gas / ENI Hungaria / ENI Slovenija*.

Commission's previous decisions that considered the B2C retail market to be national with local elements of competition.

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 of competition for B2C customers.

(32) As regards the local level, a majority of respondents to the Commission's market investigation 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.[28]

(33) For city isochrones specifically however, the market investigation resulted in a nuanced picture depending on the size of the cities in Poland. In particular regarding smaller cities (e.g., 100 000-200 000 inhabitants), the market investigation was inconclusive as to whether driving patterns of motorists in Poland are more similar to larger cities or to suburban areas in terms of distance. Furthermore, in that context the market investigation pointed to the relevance of driving time as a metric. Indeed, while some respondents consider driving patterns in Poland to be similar regardless of the size of the city mainly due to a comparable density of urban fuel station networks irrespective of the size of the city, others consider that motorists in smaller cities are more flexible and are inclined to make decisions based on driving time rather than driving distance. One respondent noted in this regard that "[the distinction based on distance] *is justified by the time it takes to drive this distance in those cities. Smaller cities are more similar in this regard to "suburban areas", with 5 km driving distance being more suitable*". Another respondent noted more generally that driving patterns "*also depend on the size of the cities, number of the petrol stations in the micro-regions, and traffic flow*." Others still pointed to more homogeneous price levels among fuel stations in smaller cities compared to bigger cities in Poland.[29]

(34) For the purpose of this decision, the Commission considers that the market for the retail sale of motor fuels to B2C customers in Poland is national in scope with local elements of competition. Given the absence of affected markets at national level, the Commission will in this decision only assess competition at the local level. To do so, 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 seven horizontally affected markets for the retail supply of motor fuels to B2C customers in Poland, at the local level (off-motorways). It does not result in an affected market at the national level; the Parties have a combined market share below 10% nationally.[30]

28 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Questions 5, 6 and 7.
29 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 8.
30 Form CO, paragraph 6.4.1.

(36) One respondent to the market investigation has also raised concerns regarding the potential for coordination between MOL and Orlen of their activities in Central and Eastern Europe, as a result of the Proposed Transaction and of a separate transaction whereby Orlen would acquire a network of petrol stations from MOL in Hungary and Slovakia.[31] These concerns are addressed below.

## 5.1. Analytical framework

(37) 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. It considered that the relevant geographic market covered the catchment area 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.

(38) The Parties also provided partial monitoring data. While MOL does not have monitoring data for its network of independent service station partners (operating under the Slovnaft brand), Lotos Paliwa was able to provide data for the locally affected market in the city of Opole, as discussed below.

## 5.2. Affected markets

(39) The Notifying Party has identified 17 local areas where the Parties' activities overlap, giving rise to the following seven locally affected markets.

**Table 2 – Overview of the Parties' overlapping activities giving rise to horizontally affected local areas in retail fuel sale in Poland**

| Name | Local area category | # of service stations within isochrone | | | Current market share (presence-based) | | Combined network share (presence-based) |
|---|---|---|---|---|---|---|---|
| | | Total | Target | MOL (Slovnaft Polska) | Target | MOL (Slovnaft Polska) | |
| Stacja Slovnaft Partner Opole I | City | […] | […] | […] | [20-30]% | [20-30]% | [50-60]% |
| Stacja Slovnaft Partner Opole II | City | […] | […] | […] | [10-20]% | [10-20]% | [20-30]% |
| Stacja Slovnaft Partner Lubcza | Rural | […] | […] | […] | [5-10]% | [20-30]% | [30-40]% |
| Stacja Slovnaft Partner Kasina Wielka | Rural | […] | […] | […] | [0-5]% | [20-30]% | [20-30]% |

31 This transaction was notified to the Commission on 10 June 2022 as Case M.10649 – *PKN Orlen / Normbenz / Selected Hungarian and Slovak Assets of MOL*.

| Name | Local area category | # of service stations within isochrone | | | Current market share (presence-based) | | Combined network share (presence-based) |
|---|---|---|---|---|---|---|---|
| | | Total | Target | MOL (Slovnaft Polska) | Target | MOL (Slovnaft Polska) | |
| Stacja Slovnaft Partner Solec Zdrój | Rural | […] | […] | […] | [5-10]% | [20-30]% | [20-30]% |
| Stacja Slovnaft Partner Koniusza | Rural | […] | […] | […] | [5-10]% | [10-20]% | [20-30]% |
| Stacja Slovnaft Partner Rzepiennik Strzyżewski | Rural | […] | […] | […] | [10-20]% | [10-20]% | [20-30]% |

*Source: Form CO, paragraph 6.5.5.*

(40) Among the overlaps identified above, the market shares would remain below 40% on all local areas, with the exception of Opole I.

(41) Competition concerns do not arise in any of the local areas identified above however, for the reasons stated below.

## 5.3. No competition concerns in horizontally affected markets

(42) *First*, the Parties' combined shares remain moderate in all but one local area (Opole I). At the same time, the number of competing service stations post-transaction is high in all but one local area (Opole I) - in every local area but one (Opole I) there remain at least 4 competitors, *i.e.*, different entities owning and/or operating competing service stations.[32]

(43) *Second,* on each of the affected markets there remain strong competitors post-transaction, including the leading national brand Orlen but also international brands such as BP and Shell. In line with that, overall, the majority of respondents to the Commission's market investigation expect price levels and constraints to remain unchanged following the transaction, as customers have sufficient alternative suppliers at local level across the Polish territory.[33]

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32 In Case M.9014 - *PKN Orlen / Grupa Lotos*, paragraph 790, the Commission considered that local competition concerns could arise in areas where the number of competitors would fall below four post-Transaction.

33 Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Questions 12 and 13.

(44) *Third*, even with regard to that local area where the Parties' combined share exceeds 40%, *i.e.* Opole I,[34] the Proposed Transaction does not give rise to concerns, for the reasons set out below.

– Regarding the local area of Opole – a small city of only about 120 000 inhabitants, factual elements show competitive constraints exerted by other nearby stations which lie in close vicinity to the Parties' stations albeit beyond the strict 2.5km driving distance radius taken into account for cities. In light of the results of the Commission's market investigation, it appears justified to take into account these out-of-market constraints.

– Indeed, first it appears that local area reality for Opole is based on driving time rather than driving distance. The method of calculating market shares using a catchment area of 2.5km driving distance in urban areas reflects the approach taken in case M.9014 – *PKN Orlen/Grupa Lotos*. The underlying logic builds on motorists' willingness to spend time in traffic in search of alternative sources for fuel and takes into account slowdowns in urban traffic compared to suburban and rural traffic (hence the split into 2.5km, 5km and 20km distances respectively). Compared to a larger urban environment, such as Warsaw, where a 2.5km driving distance corresponds to approximately 10 minutes driving time depending on traffic, the same driving time can connect destinations of more than 5km depending on traffic in a small city such as Opole.

– Based on isochrones of a 10 minutes driving time, the Parties' combined share in the local area of Opole I would fall drastically, to [10-20]%, so that the Proposed Transaction would not even result in an affected market on that basis.

– And even with only a minimal sensitivity increase, adding fuel stations within the same driving time from one of the Parties' stations in Opole I to the other, which amounts to 6 minutes, the Parties' combined share would decrease to [30-40]% or less.

– Furthermore, the Commission's market investigation confirmed the lack of concerns for the city of Opole. A majority of respondents who commented on local dynamics in Opole consider a price increase following the Transaction unlikely.[35] One of the respondents indicated for instance that "*the change of the brand from Lotos to MOL will not have an impact on fuel prices on the Opole market due to the large number of petrol stations in the city*".[36] Over 70% of the respondents estimate that customers in

[34] The Notifying Party has identified two separate local markets in the city of Opole, one around the Slovnaft Partner station at ul. Prószkowska 71 (referred to as market "Opole I") and one around the Slovnaft Partner station at ul. Ozimska 184 (referred to as market "Opole II"). Both stations do not overlap even under a wider isochrone approach based on driving time of up to 13 minutes. Even using an isochrone of 13 minutes driving time around Opole I, which would encompass the next stations belonging to the Parties' networks, the combined market share would be only [10-20]%.

[35] Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 14.

[36] Replies to eQuestionnaire 1, Retail supply of motor fuels in Poland, Question 14.1.

Opole will have sufficient alternative suppliers to source fuel from should the Parties increase prices locally post-transaction.[37]

(45) In conclusion, the Proposed Transaction would not give rise to competition concerns as a result of horizontal effects as regards the retail supply of motor fuels to B2C customers in Poland.

### 5.4. No other concerns

(46) As mentioned above, one respondent to the market investigation has also raised concerns regarding the cumulative impact of the Proposed Transaction and of a separate transaction whereby Orlen would acquire a network of petrol stations from MOL in Hungary and Slovakia.[38] The respondent was concerned 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 Poland.

(47) As explained at paragraphs (5) to (7) above, the Proposed Transaction arises in the context of the implementation of remedies adopted in case M.9014 *PKN Orlen / Grupa Lotos*.[39] On 14 June 2022, the Commission adopted a decision in that case approving MOL as a suitable purchaser for the Target. 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.

(48) 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 Target, 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 were unlikely to diminish MOL and Orlen's incentives to compete.

(49) The combined effect of the Proposed Transaction and of Orlen's acquisition of assets from MOL in Hungary and Slovakia 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 would be supplied by MOL for [percentage]% of their fuel needs. 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.

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37 Replies to eQuestionnaires 1 and 2, Retail supply of motor fuels in Poland, Question 15. All other respondents who did not consider alternative sources to be sufficient replied they did not know the local market of Opole.

38 Case M.10649 – *PKN Orlen / Normbenz / Selected Hungarian and Slovak Assets of MOL*.

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

(50) 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 of supply from Orlen for the entirety of its needs for a period of five to eight years.[40] These supplies were to be made on standard market terms, with reference to industry benchmarks. The buyer of the Lotos Paliwa retail business 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.

(51) 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.

(52) 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.[41] 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.[42]

(53) 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.[43] 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]%).[44]

(54) Asymmetry does not contribute to facilitating a successful and sustained coordination. Indeed, the asymmetric position of Orlen and MOL makes a possible

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

41 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.

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

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

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

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

(55) 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

(56) 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*