



EUROPEAN COMMISSION
DG Competition

***Case M.9014 - PKN ORLEN /
GRUPA LOTOS***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval

Date: 20/06/2022



EUROPEAN COMMISSION

Brussels, 20.6.2022
C(2022) 4336 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Polski Koncern Naftowy ORLEN
Spółka Akcyjna
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09-411 Płock
Poland

Dear Sir/Madam,

Subject: Case M.9014 - PKN ORLEN / GRUPA LOTOS
Approval of Saudi Aramco, Rossi, Unimot and MOL as purchasers of the respective Divestment Businesses following your letter of 18 January 2022 and the Trustee's opinions of 1 June 2022 (Rossi), 2 June 2022 (Unimot), 8 June 2022 (Aramco) and on 13 June 2022 (MOL)

I. FACTS AND PROCEDURE

1. By decision of 14 July 2020 ('the Conditional Clearance Decision') adopted in application of Article 8(2) of Council Regulation (EEC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation'), the Commission declared the operation by which Polski Koncern Naftowy ORLEN Spółka Akcyjna, ('Orlen', 'the Notifying Party', Poland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Grupa Lotos Spółka Akcyjna ('Lotos', Poland, together with Orlen hereafter referred to as 'the Parties') compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments

submitted by the Notifying Party annexed to the Conditional Clearance Decision ('the Commitments').

2. In particular, in order to remove the competition concerns identified in the Conditional Clearance Decision, Orlen committed to divest, or procure the divestiture of the following Divestment Business Packages (taken together referred to as 'the Divestment Businesses'):
 - a 30% stake in Lotos' Gdańsk refinery granting the purchaser the right to access up to 30% of the refinery's output (the 'Gdańsk Shareholding Divestment Business'), coupled with Lotos' wholesale fuel business (the 'LOTOS Paliwa Wholesale Divestment Business'), the Biofuels business¹ (the 'LOTOS BioPaliwa Divestment Business').
 - five Lotos and four Orlen fuel storage depots, coupled with a number of guarantees to release storage capacity and to refrain from re-booking such capacity, and the obligation to build a jet fuel import terminal in Szczecin to be ultimately owned and operated by the purchaser of the Logistics Remedy Package (the 'Logistics Remedy Package');
 - Lotos Paliwa retail business, which includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Retail Divestment Business, in particular a nation-wide retail network of 389 operating petrol stations, i.e. 256 Lotos company owned, dealer operated ("CODO") petrol stations and 133 Lotos dealer owned, franchise operated ("DOFO") petrol stations [among which are included 20 operating Miejsce Obsługi Pojazdu ("MOP") petrol stations], as well as additional 14 lease agreements for MOPs concluded between Generalna Dyrekcja Dróg Krajowych i Autostrad ("GDDKiA") and Lotos Paliwa.
 - Lotos' 50% stake in the jet fuel-marketing joint venture that it has with British Petroleum Company PLC ("BP") coupled with access to infrastructure and jet fuel supply (the 'Jet Fuel Remedy Package'), and
 - two bitumen production plants in Poland, coupled with bitumen supply agreements (the 'Bitumen Remedy Package').
3. Pursuant to the Commitments, the closing of Orlen's acquisition of Lotos is conditioned upon the Commission's approval of the purchasers for each of the Divestment Business Packages and the requisite shareholder approvals.
4. Orlen also committed to finding a purchaser and entering into a final binding sale and purchase agreement for each of the Divestment Business Packages within [...] from the date of adoption of the Clearance Decision ('the First Divestiture Period'). The Commission granted two extensions of the First Divestiture Period under paragraph 194 of the Commitments (a first extension of [...] followed by a second extension of [...]). The First Divestiture Period therefore ended on 14 January 2022.

¹ As part of the wholesale remedy package, Orlen had undertaken to divest as an option to the purchaser the Biofuels Business.

5. On 18 January 2022, within one week from the end of the First Divestiture Period and pursuant to Clause 144 of the Commitments, Orlen submitted to the Commission Reasoned Proposals for approvals of the following agreements entered into with potential purchasers before the expiry of the First Divestiture Period:
 - Aramco Overseas Company B.V. ('Aramco', the Kingdom of Saudi Arabia), on behalf of its parent company Saudi Arabian Oil Company, as the proposed purchaser for the Gdańsk Shareholding Divestment Business, the LOTOS Paliwa Wholesale Divestment Business and the Jet Fuel Remedy Package. Together with this, Orlen submitted a copy of the preliminary share purchase agreements of 11 January 2022 concluded with Aramco.
 - Rossi Biofuel Zrt. ('Rossi', Hungary) as the proposed purchaser for the LOTOS BioPaliwa Divestment Business. Together with this, Orlen submitted a copy of the preliminary share purchase agreement of 11 January 2022 concluded with Rossi.
 - UNIMOT Investments spółka z ograniczoną odpowiedzialnością ('Unimot', Poland), a special purpose vehicle of Unimot S.A., as the proposed purchaser of the Logistics Remedy Package and the Bitumen Remedy Package. Together with this, Orlen submitted a copy of the preliminary share purchase agreement of 12 January 2022 concluded with Unimot.
 - MOL Hungarian Oil and Gas Public Limited Company ('MOL', Hungary) as the proposed purchaser of the Retail Remedy Package. Together with this, Orlen submitted a copy of the preliminary share purchase agreement of 12 January 2022 concluded with MOL.
6. At the request of the Commission, amendments have been made to certain clauses of the Share and Purchase Agreements ("SPAs") with these respective purchasers relating to the lasting effect of the remedies as they could have significantly constrained the buyers' ability to dispose of the businesses, and could also have allowed Orlen to re-acquire them at a later date. [...] . Following this process, on 25 May 2022 Orlen provided updated and signed SPAs for each of the Divestment Business packages.
7. Following this, Smith & Williamson LLP ('the Trustee') submitted on 1 June 2022 its final Reasoned Opinion as regards Rossi, on 2 June 2022 its final Reasoned Opinion as regards Unimot, on 8 June 2022 its final Reasoned Opinion on Saudi Aramco and on 13 June 2022 its final Reasoned Opinion on MOL, assessing their suitability as purchasers of the various Divestment Business Packages they would respectively acquire.
8. In its Reasoned Opinions, the Trustee indicated that each of the proposed purchasers fulfil the criteria of the purchaser requirements set in the Commitments. The Trustee also indicated that, on the basis of the proposed

agreements [...], each of the Divestment Businesses² would be sold in a manner consistent with the Commitments.

II. ASSESSMENT OF THE PROPOSALS

9. In order to be approved by the Commission, a purchaser must fulfil the following criteria as laid down in Clause 154 of the Commitments:
 - ii. The purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - iii. The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The purchaser of the Retail Divestment Business specifically shall be an entity already present in the market for retail supply of fuels in Poland, having enough experience, know-how and resources to run on a lasting basis a nationwide network of retail stations in Poland.³;
 - iv. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(a) **Gdańsk Shareholding Divestment Business and the LOTOS Paliwa Wholesale Business**

10. The Gdańsk Shareholding Divestment Business and the LOTOS Paliwa Wholesale Divestment Business will be acquired by Aramco, on behalf of its parent company, Saudi Arabian Oil Company, headquartered in Dhahran, the Kingdom of Saudi Arabia.
11. Aramco is a well-established oil and gas company that operates in the Kingdom of Saudi Arabia, Europe, Asia and North America, with a workforce of 70 000 employees. Aramco has activities related to oil, gas, refined products and chemicals. With regard to oil, Aramco has global experience at all levels of the supply chain, from production to retail. The turnover generated by Aramco in the EEA amounted to approximately [...] (year 2020).

² As part of the LOTOS Paliwa Wholesale Divestment Business, Orlen had undertaken to divest as an option to the purchaser the Rail Divestment Business. Since no purchaser has deemed this option necessary for the viable and effective running of the LOTOS Paliwa Wholesale Divestment Business, the Rail Divestment Business will not be divested.

³ As per paragraph 93 of the Commitments.

II.a.1. Independence from the Parties

12. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
13. According to the information provided by Aramco and the Trustee, there are no joint ventures in which the Parties and Aramco participate, nor are there any entities in which both of the Parties and Aramco hold a material interest. The Parties do not share any executive and non-executive directors with Aramco.
14. There are however two pre-existing commercial relationships in place between the Parties and Aramco. According to Orlen, these relationships are conducted at arm's length basis.
15. A first pre-existing commercial relationship includes a long-term contract for crude oil supplies entered into in 2016 under which Aramco supplies PKN Orlen up to [...] barrels per day of crude oil.
16. According to Aramco, this crude oil supply relationship represents an insignificant fraction of its global sales (around [...] of Aramco's global crude oil sales value in 2020). Whilst the crude oil supply contract is [...] for Orlen, it is of limited importance to Aramco.
17. In the context of the acquisition of the wholesale remedy package, Orlen and Aramco have however terminated the existing crude oil supply agreement, and a new crude oil supply agreement will enter into force upon completion of the Preliminary Share Purchase Agreement that will increase Aramco's current supply from [...] barrels a day to [...] thousand barrels a day.
18. The Commission has considered whether strengthening the commercial links between Orlen and Aramco could undermine each party's independence from the other.
19. Firstly, according to Aramco, it has increased crude oil supply in its capacity as an existing crude oil supplier to Orlen and not in its capacity as a shareholder in the Gdańsk Shareholding Divestment Business. In that context, the Commission notes that Aramco has confirmed that the supply agreement was negotiated on an independent and arm's-length basis (i.e., the pricing and terms under the supply agreement do not impact the pricing and terms of delivery/supply of the refined products, other than in relation to the costs component of refined product prices) and on Aramco's standard terms and conditions for similar ventures.
20. Secondly, the Commission considers that the volumes at stake would not be sufficiently material to Aramco to compromise its independence. Orlen's dependence on Aramco will significantly increase, as the latter's supply will increase from around [...] of Orlen's total crude oil demand to between [...] and [...] depending [...]. The Commission notes that this agreement is part of Orlen's long term strategy of diversifying its sources of supply away from Russian sources (which accounted for [...] of Orlen's supply in 2018). On Aramco's side, these supplies represent much less. Concretely, under the new agreement, Orlen could at maximum be procuring 337 thousand barrels a day, which is less than [...] of Aramco's total sales.

21. Finally, in terms of security of supply, the increased importance of Aramco's supply position will strengthen the operations and viability of the Gdansk refinery, which is consistent with the design of the Commitments.
22. Aramco informed the Commission that its commercial intention is to participate fully as a shareholder in the Gdańsk Shareholding Divestment Business, as a JV partner in LABP for jet fuel, and as a fuel supplier in Poland (via the LOTOS Paliwa Wholesale Divestment Business). According to Aramco, the nature of the negotiations with Orlen demonstrates that this is the case as the terms of the various agreements necessary to enable Aramco to fully exercise its operational rights related to the Gdańsk Shareholding Divestment Business (which include a Processing Agreement, Offtake Agreement, Rail Logistics Framework Agreement and Compulsory Stock Framework Agreement) were heavily negotiated so that Aramco would be able to participate fully in the operational processes of the refinery in Gdańsk and in order to ensure that the refinery in Gdańsk would be able to meet its obligations to its customers in Poland.
23. A second commercial relationship is Aramco's business relationship with Orlen's Lithuanian subsidiary, ORLEN Lietuva, pursuant to which Aramco purchases [...] from Orlen's Lithuanian Mažeikiai refinery. These purchases are relatively limited and were obtained through open commercial tenders in which Aramco competed forcefully against other traders for these Mažeikiai volumes.
24. On the basis of the information provided by Aramco, Orlen and the Trustee, despite the existence of the above commercial relationships, the Commission concludes that Aramco is independent and unconnected to Orlen.
25. For completeness, there are ad hoc commercial arrangements for various products between Lotos and Aramco, whereby Lotos procures from Aramco. These have been limited to a small percentage of Lotos' procurement, they do not amount to structural relationships and are not material to Aramco's total sales as one of the largest producer and seller of these products. It can thus be concluded that the existing supply relationships between Lotos and Aramco are unlikely to affect Aramco's independence towards the Parties.
26. Therefore, in light of all of the above, the Commission concludes that Aramco is independent and unconnected to the Parties and its affiliated undertakings.

II.a.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

27. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and incentives to maintain and develop the wholesale remedy package as a viable and active competitive force in competition with the Parties and other competitors.
28. In terms of financial resources, Aramco's cash reserves as of 30 September 2021 totalled in excess of USD 75 billion, and the acquisition purchase prices will utilise less than 1% of this. Aramco is considered by the Trustee to be in a strong financial position, demonstrated by its historic growth in cash and net assets, and its revenue performance.

29. With respect to proven expertise, Aramco has demonstrated expertise in the refinery market, as it operates refineries – including through joint ventures - in [...]. Its present refining business is one of the largest in the world. With regard to the wholesale market, Aramco is a major wholesale player in the Middle East, North America, and Asia. It has experience selling both fuel and non-fuel refinery products.
30. In terms of its incentive to maintain and develop divested business, Aramco has demonstrated a clear strategic rationale for acquiring and developing the business that fits within its strategy of geographical expansion.
31. Aramco has [...] and this provides additional certainty that the divestment business will be operational as quickly as possible.
32. According to the Trustee, Aramco should be able to develop its presence in the downstream value chain for fuel products in Central and Eastern Europe, which will be a new geographical area of activity for it. Poland is one of the fastest growing European economies and remains an importer of crude oil. [...].
33. Aramco expects to be able to compete on price and customer experience and such is confirmed by the Trustee.
34. On the basis of the above, the Commission considers that Aramco has sufficient financial resources, proven expertise, and incentives to maintain and develop the Gdańsk Shareholding Divestment Business and the LOTOS Paliwa Wholesale Divestment Business, as a viable and active competitor in competition with the Parties and other players.

II.a.3. Absence of prima facie competition problems

35. Pursuant to the Commitments, the acquisition of the divestment business by the Purchaser must not be likely to create prima facie competition concerns.
36. In light of the information provided by the Parties and Aramco, the acquisition of the Gdańsk Shareholding Divestment Business and the LOTOS Paliwa Wholesale Divestment Business by Aramco does not create prima facie competition concerns. Indeed, Aramco will effectively be a new entrant to the Polish market.
37. Aramco confirmed that its purchase of both the LOTOS Paliwa Wholesale Divestment Business will require notification of the concentration to the Commission. Given that Aramco is a new entrant to the Polish Wholesale fuels market, at the moment of issuing the present buyer approval decision the Commission takes the preliminary view that that transaction will not lead to competition concerns. [...].
38. Neither Aramco nor the Trustee have identified any information that would indicate a possible competition concern or cause the implementation of the Commitments to be delayed as a result of the notification.
39. On the basis of the above, and in line with the Reasoned Opinion, the Commission concludes that Aramco fulfils the Purchaser Requirement that its acquisition of the Gdańsk Shareholding Divestment Business and the LOTOS Paliwa Wholesale Divestment Business is neither likely to create prima facie

competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(b) LOTOS BioPaliwa Divestment Business

40. The LOTOS BioPaliwa Divestment Business will be acquired by Rossi and operated as a standalone business.
41. Rossi is owned by Envien International Limited (75%) and MOL Hungarian Oil and Gas Public Limited Company (25%). Envien International Limited is based in Malta and is the holding and financing company of the Envien Group. Rossi was chosen by the Envien Group as a vehicle to carry out the transaction.
42. The Envien Group, including Rossi, is a major player in the biofuel industry in Central and Eastern Europe. Envien Group is one of the 10 largest biofuel producers in Europe. It produces both biodiesel and bioethanol. Rossi was founded in 2006 as a greenfield investment and the actual production started in December 2007. Rossi's main product is biodiesel produced from fresh vegetable oils and used cooking oils.

II.b.1. Independence from the Parties

43. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
44. According to the information provided by Rossi and the Trustee, there are no joint ventures in which the Parties and Rossi participate, nor are there any entities in which both of the Parties and Rossi hold a material interest. The Parties do not share any executive and non-executive directors with Rossi.
45. There are limited pre-existing commercial relationships in place between the Parties and Rossi for occasional and limited volume purchases and supplies of biofuels. According to the Trustee, these relationships are conducted at arm's length basis and are of a limited scope. As such, these links will not undermine Rossi's suitability and independence from the Parties.
46. Furthermore, there will be two transitional service agreements between the LOTOS BioPaliwa Divestment Business and the biofuel business that will be held by Orlen but according to the Trustee these do not raise concern on the current terms and conditions. Indeed, these transitional service agreements [...] will be in place for a maximum duration of respectively [...] and [...]. Appropriate information barrier provisions are in place. As such, these links will not undermine Rossi's suitability and independence from the Parties.
47. In addition, Orlen has concluded with Rossi an offtake agreement (the 'FAME Contract') whereby Rossi will supply [...] of its capacity to Orlen. As a result, Orlen will remain the largest customer of Rossi as the purchaser of the LOTOS BioPaliwa Divestment Business. At this stage of the procedure, Rossi has not yet approached other potential purchasers for its output.
48. The Commission has considered whether this raises concerns as to the independence of Rossi post-transaction by impacting Rossi's ability to grow the LOTOS BioPaliwa Divestment Business and/or the possibility of Orlen exerting

commercial pressure on Rossi that could impact the viability of the LOTOS BioPaliwa Divestment Business.

49. In this context, it should be mentioned that the LOTOS BioPaliwa Divestment Business was intended to be offered as an option to the purchaser of the Gdańsk Shareholding Divestment Business, as biofuels are an important input in the refinery process. [...].
50. Orlen will acquire a considerable portion of the output of the LOTOS BioPaliwa Divestment Business and this reflects the fact that Orlen is the prevailing source of demand for biofuels in Poland.
51. The offtake of biofuels by Orlen from the Lotos Biopaliwa Divestment Business for the coming years was foreseen and expressly stipulated in the Commitments. This should guarantee that Rossi will have a certain outlet for its production, and is as such rather beneficial to the LOTOS BioPaliwa Divestment Business' continued viability. The FAME Contract will thus provide a satisfactory level of security for the continued operation of the LOTOS BioPaliwa Divestment Business in anticipation of Rossi diversifying its customer base.
52. In that respect, it needs to be noted that [...]. According to the Trustee, Rossi has all the resources and expertise to diversify its customer base and will immediately start active marketing towards new customers.
53. Quite apart from Rossi's ability and incentive to diversify its customer base, there will in the meantime be ongoing monitoring by the Trustee that Orlen will not exercise undue commercial pressure on Rossi by reducing its purchase orders to the extent that this will impact the viability of the Divestment Business.
54. On the basis of the information provided by Orlen, Rossi, and the Trustee, the Commission therefore concludes that Rossi is independent and unconnected to the Parties and its affiliated undertakings. In any case, as foreseen in the Commitments, the Trustee will monitor to ensure that that Orlen's position as the main customer of the LOTOS BioPaliwa Divestment Business will not negatively impact the viability of the Divestment Business.

II.b.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

55. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and incentives to maintain and develop the wholesale remedy package as a viable and active competitive force in competition with the Parties and other competitors.
56. In terms of financial resources, Rossi and the Envien group as a whole show a recent history of growth in revenue, net assets and cash and cash equivalents. Envien provided the Trustee with sufficient positive bank balances for funding the acquisition of the LOTOS BioPaliwa Divestment Business at the purchase price set out in the SPA.
57. With regard to proven expertise, it is clear that Rossi is a key player on the Central-Eastern European biofuel market, operating as a biodiesel producer with significant production capabilities. Rossi benefits from being part of the Envien

Group, which is an important producer of biofuels in Europe. According to the Trustee, Rossi has proposed a credible and experienced management team for the LOTOS BioPaliwa Divestment Business.

58. In terms of incentives, Rossi considers itself well placed to compete on the biofuel market in the long-term. The purchase of the LOTOS BioPaliwa Divestment Business will strengthen Rossi's ability to compete in the market. Rossi has demonstrated that it intends to continue operating the existing production assets of the LOTOS BioPaliwa Divestment Business and seek investment opportunities since it considers biofuels to be a growth market.
59. The fact that the supply of biofuel to Orlen under the FAME contract binds Rossi for around [...] of its production is likely to be transitory. According to the Trustee, Rossi is independent and has an incentive to be aggressive to progressively reduce its dependency on Orlen. Rossi has the required expertise, experience and personnel to do so and will progressively roll out its marketing approach in order to attract new customers. In any event, the purpose of this optional remedy was primarily to add to the viability of the wholesale remedies for those buyers that required biofuels rather than to address a competition concern in the biofuels market.
60. In sum, and on the basis of the above, the Commission considers that Rossi has sufficient financial resources, proven expertise, and incentives to maintain and develop the LOTOS BioPaliwa Divestment Business as a viable and active competitor in competition with the Parties and other players. The Trustee's post-closing monitoring activities will ensure that the Parties will not negatively impact the viability of the LOTOS BioPaliwa Divestment Business by exercising undue commercial pressure on Rossi.

II.b.3. Absence of prima facie competition problems

61. Pursuant to the Commitments, the acquisition of the divestment business by the Purchaser must not be likely to create prima facie competition concerns.
62. In light of the information provided by the Parties and Rossi, the acquisition of the wholesale remedy package by Rossi does not likely create prima facie competition concerns.
63. Orlen has submitted that the activities of the LOTOS BioPaliwa Divestment Business and Rossi / Envien Group overlap in the market for the production of biodiesel and biocomponents. Based on submissions from Orlen and Rossi, the Divestment Business would add circa 100 kt per year to Envien Group's total production capacities of biodiesel of circa 300 kt per year. According to Orlen, post-acquisition of the Divestment Business, the Envien Group would account for circa [...] of biodiesel production capacity in the EEA where it faces several credible competitors with comparable production capacity such as Cargill and the German producers New Natural Energie West and Verbio.
64. Rossi indicated that its purchase of the Divestment Business required notifications to the National Competition Authorities of Poland and Austria. On 30 May 2022, Rossi confirmed that it obtained the antitrust clearance from both Austrian and Polish authorities and that none other are pending. Neither Rossi nor the Trustee have identified any other information that would indicate a

possible competition concern or would delay the implementation of the Commitments.

65. On the basis of the above, and in line with the Reasoned Opinion, the Commission concludes that Rossi fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(c) Logistics Remedy Package

66. The logistics remedy package will be acquired by Unimot. Unimot is a Polish publicly listed company active in the energy industry, including the markets for sales of petroleum products, natural gas, and electricity. Unimot has increased its operations over the last 10 years through both organic growth and acquisitions and its underlying strategic rationale for the proposed transaction is to further increase its presence in Poland and the CEE region.

II.c.1. Independence from the Parties

67. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
68. According to the information provided by Unimot and the Trustee, there are no joint ventures in which the Parties and Unimot participate. Then, in terms of interests there are no entities in which both of the Parties and Unimot hold a material interest. As regards Unimot itself, nearly 36% of Unimot shares are in free float. Therefore, Unimot cannot exclude the possibility that some of its free float shareholders may also be shareholders of Orlen or Lotos. In any case, Unimot confirmed that none of the said 36% of the shareholders owning shares in free float, either individual or institutional, holds more than 5% of its shares or corresponding voting rights. Lastly, the Parties also do not share any executive and non-executive directors with Unimot.
69. There are a number of pre-existing commercial relationships in place between the Parties and Unimot for occasional and limited volume purchases and supplies, none of which however could harm Unimot's independence from the Parties. These consist mainly of [...] to Unimot where the latter requires volumes in addition to volumes procured internationally and these are considered by the Trustee as standard commercial relationships.
70. Given that Unimot sources from multiple suppliers as a trader of fuels, it is evident that these relationships are conducted on an arm's length basis. Unimot predicts that [...].
71. Furthermore, post-closing, the Parties will provide to Unimot a number of transitional services for the storage business, including services such as [...]. These will be of a short duration and do not raise concerns over independence of Unimot according to the Trustee.
72. On the basis of the information provided by the Parties, Unimot, and the Trustee, the Commission concludes that Unimot is independent and unconnected to the Parties and its affiliated undertakings.

II.c.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

73. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise, and incentives to maintain and develop the wholesale remedy package as a viable and active competitive force in competition with the Parties and other competitors.
74. As regards financial resources, the Commission has in particular investigated whether Polish tax requirements related to the storage of fuels could strain Unimot's financial resources to maintain and develop the Logistics Remedy Package as a viable and active competitive force. In effect, in order to operate a logistics remedy package, the operator needs to be certified as a tax warehouse and this requires a payment of an excise tax guarantee. That excise tax guarantee is intended to cover the potential tax liability in the event that the fuels placed in storage without excise tax having been levied should be destroyed. The operator of a fuel storage business in Poland is not usually required to provide the full excise tax guarantee. Ordinarily, so long as the operator meets certain requirements, it will be granted an exemption. These requirements are that the operator not have any tax arrears, that its financial situation and assets should be sufficient to secure the potential excise liabilities, and that it have one year of experience in arranging for excise suspension. Where the operator does not meet these requirements, a flat rate security of 30% is usually required by the State.
75. [...], Unimot has demonstrated that it possesses the necessary financial resources [...] to provide a flat rate security of 30% of the amount of the excise tax guarantee.
76. According to the Trustee, Unimot has demonstrated significant revenue growth in recent years. [...].
77. Unimot forecasts that it could hold [...].
78. Therefore, in line with the Trustee's opinion, the Commission considers that Unimot has the financial resources to maintain and develop the Logistics Remedy Package as a viable and active competitive force.
79. With respect to proven expertise, the Trustee considers Unimot's expertise with regard to storage to be indirect and somewhat limited.
80. The Commission considers that while Unimot would be a new entrant as regards fuels storage, apart from owning and operating its own LPG terminal in Zawadzkie, it is an established fuels trader, wholesaler and reseller. Unimot is an established operator of petrol stations under the brand "Avia" and such confirms Unimot's credibility as a committed long-term player in the Polish fuels markets. Unimot benefits from its existing business relations with key market players which will be beneficial for growing the business of providing fuel storage services.
81. In terms of incentives to maintain and develop the Logistics Remedy Package, Unimot has demonstrated a clear strategic rationale for acquiring and developing the Logistics Remedy Package, which fits within its group strategy as it complements – also from a cost optimisation point of view - its activities as an

established operator of petrol stations under the “Avia” brand. According to the Trustee, the acquisition of the Logistics Remedy Package offers real opportunities for growth and portfolio diversification as well as a basis for further strengthening of Unimot’s position as an independent player on the Polish market. This was confirmed by Unimot as it has identified several potential synergies and business opportunities arising from the acquisition of the Logistics Remedy Package.

82. In sum, and on the basis of the above, the Commission considers that Unimot has sufficient financial resources, proven expertise, and incentives to maintain and develop the Logistics Remedy Package as a viable and active competitor in competition with the Parties and other players. Whilst it is a new market entrant with regard to fuels storage other than for LPG e, it has the requisite resources and strategic rationale for acquiring and developing the business within its Group.

II.c.3. Absence of prima facie competition problems

83. Pursuant to the Commitments, the acquisition of the divestment business by the purchaser must not be likely to create prima facie competition concerns.

84. In light of the information provided by the Parties and Unimot, the acquisition of the logistics remedy package by Unimot does not create prima facie competition concerns. Unimot will effectively be a new entrant for storage on the Polish market.

85. Unimot’s purchase of the Logistics Remedy Package will require a notification to the National Competition Authority of Poland. Pre-notification is ongoing. As UNIMOT is not currently present on the market for storage of gasoline and diesel fuels, the transaction expected to be cleared within a short time frame. It is not expected that this process will face complications or delays.

86. On the basis of the above, and in line with the Reasoned Opinion, the Commission concludes that Unimot fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(d) Retail Remedy Package

87. The Retail Remedy Package will be acquired by MOL Group (“MOL”), headquartered in Budapest, Hungary.

88. MOL is an integrated, international oil and gas company and one of the largest such companies in CEE. MOL is active in over 30 countries with an international workforce of 25 000 people and a track record of more than 100 years in the industry. MOL operates three refineries and two petrochemical plants under integrated supply chain management in Hungary, Slovakia and Croatia and owns a network of almost 2 000 service stations across 9 countries in Central & Southeast Europe. MOL shares are listed on the Budapest and the Warsaw Stock Exchanges.

89. MOL’s underlying strategic rationale for the acquisition of the Retail Remedy Package is to increase its presence in Europe and the CEE region. The past acquisitions and integration of acquired service station networks have played a

significant role in its strategy to become a leading regional player in fuel retail. MOL follows a multi-brand strategy and provides tailor-made local offers in different countries.

II.d.1. Independence from the Parties

90. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
91. According to the information provided by MOL and the Trustee, there are no joint ventures in which the Parties and MOL participate, nor are there any entities in which both of the Parties and MOL hold a material interest. Lotos and MOL have a shared minority interest in a development project in Norway, but [...]. The Parties do not share any executive and non-executive directors with MOL.
92. There are current and future commercial links between MOL and the Parties.
93. According to the information provided by MOL and the Trustee, MOL's Polish subsidiary sold [...], and [...], but the volumes were non-material compared to the Polish market size. There is no direct supply between Orlen/LOTOS and Mol's current SN Partner stations in Poland. MOL buys fuel occasionally on spot (in particular when its own products have limited availability) from Orlen/Lotos and then resell to their partners. Orlen and Lotos submitted that they do not have any agreement with Sloznaft Poland, which is the supplier of fuels to MOL. Orlen and Lotos only deliver fuel to Sloznaft Poland incidentally and on spot basis.
94. MOL provides to a very limited extent [...].
95. Moreover, there will be two transitional service agreements, for [...], between the Retail Divestment Business and the Lotos retail stations retained by Orlen.
96. According to the Trustee, these do not raise concern on the current terms and conditions. Indeed, the sales are marginal, and the transitional service agreements are for a limited duration. As such, these links will not undermine MOL's suitability and independence from the Parties.
97. More importantly however, a fuels supply agreement, will be put in place between MOL and the Parties as foreseen under the Commitments. The agreement foresees that Orlen will supply [...] of fuel required by the Lotos Retail Divestment Business for the first year, which then changes to [...]. Whilst MOL is bound by the minimum supply arrangements, it expects [...].
98. In addition, the agreement to sell the Retail Remedy Package to MOL was concluded in parallel with an agreement by MOL to sell Orlen a network of 185 petrol stations in Hungary and Slovakia (144 service stations in Hungary and 41

stations in Slovakia, some of which are currently owned by MOL and others by Normbenz, [...]).⁴ [...].

99. [...].

100. The Commission has assessed whether this swap, permitting MOL to expand on the Polish retail market and Orlen to expand on the Hungarian and Slovak retail markets, with both Parties depending on each other for fuel supplies, could dampen their incentives to compete.

101. When accepting the Commitments, the Commission considered it essential that the buyer of the Retail Divestment Business has a guaranteed source of supply from Orlen for the entirety of its needs. [...]. As these supplies are made at market conditions combined with security of supply, the elements are in place for the purchaser to establish itself as a competitor on the Polish retail market.

102. As to the question whether the swap arrangement itself could have a chilling effect on MOL and Orlen competing in the markets they have entered, such could only occur as a result of tacit coordination whereby MOL and Orlen through their respective acquired positions would have means to retaliate against each other in case of too aggressive pricing. Such would require that MOL and Orlen have such elevated market positions on the respective retail markets that no other retail competitors could disrupt that coordinated course of action. Whilst both MOL and Orlen will post swap arrangement 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 market positioning, will show significant asymmetry, whereby MOL's market share is that of a challenger to market leader Orlen. 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 arrangement itself could diminish the incentive of MOL and the Parties to compete against each other. Finally, the acquisition by Orlen of Hungarian MOL stations does not provide Orlen with a market position that is sufficiently important to provide it with retaliation ability against MOL if the latter were to develop into a player that is perceived as too aggressive. The acquisition by Orlen is not subject to competition law clearance by the Hungarian Competition Authority.

103. Moreover, MOL's acquisition of the Retail Divestment Business is not conditional on Orlen's acquisition of the Hungarian and Slovakian stations. While the reverse is true, i.e. that Orlen's acquisition of the Hungarian and Slovakian stations is conditional on MOL acquiring the Retail Divestment Business, this asymmetric conditionality does not depart from the terms of the Commitments. Decoupling the two transactions would in any event not fundamentally change the parties' incentives or behaviour.

⁴ This transaction is being notified to the Commission separately as Case M.10649 Orlen/Normbenz/MOL.

104. On the basis of the information provided by Orlen and the Trustee, the Commission therefore concludes that MOL is independent and unconnected to the Parties and its affiliated undertakings.

II.d.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

105. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise, and incentives to maintain and develop the Retail Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The purchaser of the Retail Divestment Business specifically shall be an entity already present in the market for retail supply of fuels in Poland, having enough experience, know-how and resources to run on a lasting basis a nationwide network of retail stations in Poland.

106. MOL is one of the most valuable companies in CEE. MOL's revenue has grown steadily between 2017 and 2020 (with the exception of the period 2020-2021 because of the pandemic). MOL is considered by the Trustee to be in a strong financial position, demonstrated by its historic growth in cash and net assets, and its revenue performance. [...]. In addition, Orlen will purchase the MOL petrol stations in Hungary and Slovakia. [...].

107. As such, it appears that MOL has the financial resources to maintain and develop the Retail Divestment Business.

108. With respect to proven expertise, MOL has demonstrated expertise in the retail market, as it owns and operates a network of nearly 2,000 service stations under 6 well-established brands (MOL, Slovnaft, INA, Tifon, Energopetrol and PapOil) across 9 countries in CEE. According to the Trustee, MOL's networks play a leading role on the Croatian, Hungarian, Slovakian, and Bosnian retail markets and represent the premium segment in Czech Republic, Romania and Slovenia. MOL also has a retail presence in Serbia and Montenegro.

109. In Poland, MOL has had a (limited) presence for more than 15 years, with 79 partnership petrol stations, mainly in the south and southwestern part of Poland. That also implies that MOL already has the necessary experience regarding the legal framework of running a petrol station in Poland.

110. In terms of incentives to maintain and develop the Retail Divestment Business, MOL has demonstrated a clear strategic rationale for expanding its existing business in Poland and becoming the third-largest retail player in the CEE region. [...]. Besides maintaining its strong position in fuel retailing, [...].

111. In sum, and on the basis of the above, the Commission considers that MOL has sufficient financial resources, proven expertise and incentives to maintain and develop the retail remedy package as a viable and active competitor in competition with the Parties and other players.

II.d.3. Absence of prima facie competition problems

112. Pursuant to the Commitments, the acquisition of the divestment business by the Purchaser must not be likely to create prima facie competition concerns.

113. In light of the information provided by the Parties and MOL, the acquisition of the retail remedy package by MOL does not likely create prima facie competition concerns, other than possible local overlaps. Other than in the south and south-western part of Poland, MOL will effectively be a new entrant to the Polish market.
114. Due to horizontal overlaps, albeit limited to South East Poland, the proposed acquisition constitutes a notifiable transaction to the Commission. At the moment of issuing the present buyer approval decision the Commission takes the preliminary view that the transaction will not lead to competition concerns.
115. On the basis of the above, and in line with the Reasoned Opinion, the Commission concludes that MOL fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(e) Jet Fuel Remedy Package

116. The Proposed Purchaser for The Jet Fuel Remedy Package is Aramco, headquartered in Dhahran, the Kingdom of Saudi Arabia.
117. Aramco's operations are described above in the context of assessment of its proposed acquisition of the Gdańsk Shareholding Divestment Business and LOTOS Paliwa Wholesale Divestment Business. Aramco's underlying strategic rationale for the proposed transaction is to expand its global presence and brand recognition, and increase its global earnings.

II.e.1. Independence from the Parties

118. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
119. Aramco is independent and unconnected to the Parties and its affiliated undertakings, as explained above in the context of assessment of its acquisition of the Gdańsk Shareholding Divestment Business and LOTOS Paliwa Wholesale Divestment Business.

II.e.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

120. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise, and incentives to maintain and develop the wholesale remedy package as a viable and active competitive force in competition with the Parties and other competitors.
121. Aramco has the appropriate financial resources as explained in the context of assessment of its acquisition of the Gdańsk Shareholding Divestment Business and LOTOS Paliwa Wholesale Divestment Business.
122. With respect to proven expertise, Aramco is a producer and wholesaler of jet fuel and operates its own infrastructure at airports in Saudi Arabia. Aramco will have - in addition to the supply agreement that the Commitments foresee -

access to its own sources of jet fuel supply through the Gdańsk Shareholding Divestment Business. These volumes can be offered to the joint venture. Importantly, post-acquisition, Aramco will be able to rely on the current experience, personnel and know-how of the Lotos Air-BP joint venture and this provides additional certainty that the divestment business will be operational and competing on the market within a short period of time.

123. In terms of incentives to maintain and develop the Jet Fuel Remedy Package, Aramco's strategy is to expand its global presence and brand recognition, and increase its global earnings. Poland is amongst the fastest growing economies in the EU and therefore provides a notable opportunity for Aramco to achieve a vertically integrated presence in the region by combining the Jet fuel business with the acquisition of the Gdańsk Shareholding Divestment Business and LOTOS Paliwa Wholesale Divestment Business. [...].

124. In sum, Aramco expects to be able to compete on price and customer experience and such is confirmed by the Trustee. On the basis of the above, the Commission considers that Aramco has sufficient financial resources, proven expertise, and incentives to maintain and develop the Jet Fuel remedy package as a viable and active competitor in competition with the Parties and other players.

II.e.3. Absence of prima facie competition problems

125. Pursuant to the Commitments, the acquisition of the divestment business by the Purchaser must not be likely to create prima facie competition concerns.

126. In light of the information provided by the Parties and Aramco, the acquisition of the Jet Fuel Remedy Package by Aramco does not create prima facie competition concerns. Aramco has had no jet fuel sales in the CEE region so far, [...]. Aramco will effectively be a new entrant to the Polish jet fuel markets.

127. [...].

128. The acquisition of the Jet Fuel remedy package by Aramco is notifiable to the Commission. Given that Aramco is a new entrant to the Polish Jet fuels market, at the moment of issuing the present buyer approval decision the Commission takes the preliminary view that the transaction will not lead to competition concerns.

129. On the basis of the above, and in line with the Reasoned Opinion, the Commission concludes that Aramco fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

(f) Bitumen Remedy Package

130. The bitumen Remedy Package will be acquired by Unimot. Unimot's activity is further described above with regard to the Logistics Remedy Package.

131. Unimot's underlying strategic rationale for the proposed transaction is to expand its operations over the last 10 years through organic growth, as well as by acquiring other companies, including companies active in bitumen on the Polish market.

II.f.1. Independence from the Parties

132. Pursuant to the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent of and unconnected to the Parties and its affiliated undertakings.
133. Unimot is independent and unconnected to the Parties and its affiliated undertakings, as explained in the context of assessment of its acquisition of Logistics Remedy Package.

II.f.2. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

134. Pursuant to Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and incentives to maintain and develop the wholesale remedy package as a viable and active competitive force in competition with Orlen and other competitors.
135. Unimot has the appropriate financial resources, as explained in the context of assessment of its acquisition of Logistics Remedy Package. According to the Trustee, these resources are sufficient to also maintain and develop the Bitumen Remedy Package as a viable and active competitive force in competition with Orlen and other competitors.
136. With respect to proven expertise, Unimot has been active on the bitumen market in Poland since 2019. Unimot entered the bitumen market in 2019 by taking over the commercial division of ONICO bitumen. Unimot has successfully completed that process of integration and currently has a [...] market share on Polish bitumen market. According to the Trustee, Unimot has the proven expertise to maintain and develop the Bitumen Divestment Business as a viable and active competitive force in competition with Orlen and other competitors.
137. In terms of incentives, entering the Polish bitumen market has allowed Unimot to obtain synergies in the form of increased business activity with its suppliers from local refineries, as well as customers. As Unimot has already started its activities on the bitumen market, it has a strong incentive to further develop its activities in this industry.
138. In sum, and on the basis of the above, the Commission considers that Unimot has sufficient financial resources, proven expertise, and incentives to maintain and develop the Bitumen Divestment Business as a viable and active competitor in competition with Orlen and other players.

II.f.3. Absence of prima facie competition problems

139. Pursuant to the Commitments, the acquisition of the divestment business by the Purchaser must not be likely to create prima facie competition concerns.
140. In light of the information provided by Orlen and Unimot, and given the current modest market share of Unimot in the relevant bitumen market, the acquisition of the Bitumen Divestment Business by Unimot does not create prima facie competition concerns.

141. [...]. At the moment of issuing the present buyer approval decision the Commission takes the preliminary view that the transaction will not lead to competition concerns.

142. On the basis of the above, the Commission concludes that Unimot fulfils the Purchaser Requirement that it is neither likely to create prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed.

III. ASSESSMENT OF THE AGREEMENTS

143. According to the Trustee, in general, the SPAs as amended follow the requirements of the Commitments closely. Likewise, the transitional services to be provided to the respective purchasers appear to be comprehensive, and generally in line with what is required pursuant to the Commitments, although some further negotiations on operational issues may be required. The present assessment does not hinge on the conclusion of these discussions. In any case, the Trustee will carefully monitor these negotiations.

144. The Commission notes that [...] SPAs and the joint venture agreement covering the Gdańsk Shareholding Divestment Business (the ‘Gdańsk refinery JVA’) [...].

145. [...].

146. [...] [...].

147. [...].

148. [...].

149. [...].

150. As to the ‘Gdańsk refinery JVA’, for the operation of the Lotos Gdańsk refinery, with Aramco, the Commission notes that [...] are sometimes included in joint venture agreements and that [...] is of crucial importance to each Orlen and Aramco. For this reason, the Commission agreed that [...].

151. In response, Orlen has removed the [...] clauses from all SPAs with potential purchasers and replaced these as required. [...].

152. The negotiations on the Joint Venture Agreement (“JVA”) also resulted in amendments to the Articles of Association of the Company [...]. The trustee will follow up on this issue [...].

153. In light of the above and based on the information provided by the Parties and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

IV. CONCLUSION

154. On the basis of the above assessment, the Commission approves Aramco as a suitable purchaser of the Gdańsk Shareholding Divestment Business, the LOTOS Paliwa Wholesale Divestment Business and the Jet Fuel Divestment Business for the above-mentioned reasons.
155. On the basis of the above assessment, the Commission approves Rossi as a suitable purchaser of the LOTOS BioPaliwa Divestment Business for the above-mentioned reasons.
156. On the basis of the above assessment, the Commission approves Unimot as a suitable purchaser of the Logistics Remedy Package and the Bitumen Remedy Package for the above-mentioned reasons.
157. On the basis of the above assessment, the Commission approves MOL as a suitable purchaser of the Retail Remedy Package for the above-mentioned reasons.
158. On the basis of the Transaction Documents, the Commission further concludes that each of the Divestment Businesses is being sold in a manner consistent with the Commitments.
159. This decision only constitutes approval of the proposed purchasers identified herein and of the Transaction Documents as laid down in Clause 144 of the Commitments. This decision does not constitute a confirmation that Orlen has complied with its Commitments.
160. This decision is based on Section D of the Commitments attached to the Commission Decision of 14 July 2020.

For the Commission

(Signed)
Olivier GUERSENT
Director-General