



## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**  
**at its meeting on 03/05/2023**  
**concerning a draft decision**  
**in case M. 10438 - MOL / OMV SLOVENIJA**

<b>RAPPORTEUR: GERMANY</b>
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### **The Transaction**

1. The Advisory Committee (11 Member States) agrees with the Commission that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **Union Dimension**

2. The Advisory Committee (11 Member States) agrees with the Commission that the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

### **Product market definition**

3. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant product markets, and, in particular, in relation to the market for the retail supply of motor fuels:
  - 3.1. That the market for the retail supply of motor fuels is a distinct market, which should be further segmented by customer type, *i.e.*, B2C customers and B2B customers.
  - 3.2. That there is an overall market for the retail supply of motor fuels and a segmentation by fuel type is not justified.
  - 3.3. That the market for the retail supply of motor fuels in Slovenia should be further segmented, distinguishing between fuel supplied at DARS stations and fuel supplied at non-DARS stations.
  - 3.4. That there is an overall market for the retail supply of motor fuels, leaving open whether a segmentation by regular stations and trucks-only stations would be justified.
  - 3.5. That there is an overall market for the retail supply of motor fuels and a segmentation by manned and unmanned fuel stations is not justified.
  - 3.6. That the market for the retail supply of motor fuels should be further segmented, distinguishing between regular petrol stations and marine stations.

4. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant product market for the retail supply of AdBlue as a distinct market, leaving open whether it should be further segmented.
5. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant product market for the wholesale supply of diesel and gasoline, leaving open whether it should be further segmented between ex-refinery sales and non-retail sales and focusing on the narrowest possible market for non-retail sales of diesel and gasoline in Slovenia, for the purposes of the present case.
6. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant product market for the non-retail supply of heating oil, leaving open whether it should be further segmented by different types of heating oil and focusing on the narrowest possible market for the non-retail supply of heating oil extra light ("HOEL") in Slovenia, for the purposes of the present case.
7. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant product market for the wholesale supply of bitumen as a separate market, leaving open whether it should be further segmented by different types of bitumen.
8. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant product market for the wholesale supply of heavy fuel oil as a separate market, leaving open whether it should be further segmented by different types of heavy fuel oil.

### **Geographic market definition**

9. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant geographic market for the retail supply of motor fuels to B2C customers in Slovenia, namely that it is national in scope, with local elements of competition.
10. The Advisory Committee (11 Member States) agrees with the Commission's definition of the relevant geographic market for the retail supply of motor fuels to B2B customers in Slovenia, namely that it is national in scope.
11. The Advisory Committee (11 Member States) agrees with the Commission's decision to leave open whether the geographic definition of the market for the retail supply of AdBlue should be national or wider than national.
12. The Advisory Committee (11 Member States) agrees with the Commission's decision to leave open whether the geographic definition of the market(s) for the non-retail and ex-refinery supply of diesel and gasoline should be national or wider than national.
13. The Advisory Committee (11 Member States) agrees with the Commission's decision to leave open whether the geographic definition of the market for the non-retail supply of heating oil should be national or wider than national.
14. The Advisory Committee (11 Member States) agrees with the Commission's decision to leave open whether the geographic definition of the market for the wholesale supply of bitumen should be national or wider than national.

15. The Advisory Committee (11 Member States) agrees with the Commission's decision to leave open whether the geographic definition of the market for the wholesale supply of heavy fuel oil should be national or wider than national.

### **Competitive Assessment**

16. The Advisory Committee (11 Member States) agrees with the Commission's assessment that the Transaction **would significantly impede effective competition due to horizontal non-coordinated effects with regard to the market for the retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia.**
17. The Advisory Committee (11 Member States) agrees with the Commission's assessment that the Transaction **would significantly impede effective competition due to horizontal coordinated effects with regard to the market for the retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia.**
18. The Advisory Committee (11 Member States) agrees with the Commission's assessment that the Transaction **would not significantly impede effective competition with regard to:**
- 18.1. The market for the retail supply of motor fuels to B2B customers from non-DARS stations in Slovenia.
  - 18.2. The market for the retail supply of AdBlue in Slovenia.
  - 18.3. The market for the wholesale supply of diesel and gasoline in Slovenia.
  - 18.4. The market for the non-retail supply of HOEL in Slovenia.
  - 18.5. The market for the wholesale supply of bitumen in Slovenia.
  - 18.6. The market for the wholesale supply of diesel and gasoline in Croatia.
  - 18.7. The market for the non-retail supply of HOEL in Croatia.
  - 18.8. The market for the wholesale supply of heavy fuel oil in Croatia.
  - 18.9. The upstream market for the ex-refinery supply of diesel and gasoline in Slovenia and the downstream market for the non-retail supply of diesel and gasoline in Slovenia.
  - 18.10. The upstream markets for the wholesale (ex-refinery and non-retail) supply of diesel and gasoline in Slovenia and the retail supply of diesel and gasoline in Slovenia.

### **Commitments**

19. The Advisory Committee (11 Member States) agrees with the Commission that the Final Commitments address the competition concerns in relation to the horizontal non-coordinated effects and the horizontal coordinated effects in the market for retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia.

20. The Advisory Committee (11 Member States) agrees with the Commission that, subject to full compliance with the Final Commitments, the Transaction would not significantly impede effective competition in the internal market or a substantial part of it.

**Compatibility with the internal market**

21. The Advisory Committee (11 Member States) agrees with the Commission that the Transaction should, therefore, be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.