MERGERS (OIL): THE EXXON / MOBIL CASE

Subject: Mergers
Conditions (for clearance)

Industry: Oil, natural gas
(Some implications for other industries)

Parties: Exxon
Mobil
Thyssengas GmbH
Erdgas Munster

Source: Commission Statement IP/99/708, dated 29 September 1999

(Note. Not surprisingly, the Commission has had some doubts about the merits of the recent series of concentrations in the oil industry, of which this is the biggest. It is, however, satisfied that, given the conditions as to divestiture, which are quite extensive, and the continuing competition among large and small operators in this field, there is for the time being no cause for concern. The case is interesting, in that the two operators are both US companies. Until comparatively recently, there would have been some surprise that two US corporations might have been prevented from merging as the result of a decision taken in Brussels. But, to the extent that the corporations trade in Europe, they are subject to European rules.)

The Commission of the European Communities has authorised the merger between Exxon and Mobil, who are active in the whole oil and gas chain from exploration to motor fuel retailing. As initially notified, the operation would have created or strengthened dominant positions on eight markets for natural gas, motor fuel and aviation oil in several countries. Exxon and Mobil have made a series of undertakings to eliminate these concerns. The merger would have created or strengthened dominant position on the following markets:

(a) wholesale transmission of natural gas in the Netherlands;
(b) long-distance wholesale transmission of natural gas in Germany;
(c) underground storage facilities for natural gas servicing the South of Germany;
(d) Group I base oils in the EEA;
(e) motor fuel retailing in Austria, Germany, Luxembourg, Netherlands and the UK;
(f) motor fuel retailing on toll motorways in France;
(g) aviation lubricants world-wide; and
(h) aviation fuels at Gatwick Airport (UK).

To eliminate these concerns, Exxon and Mobil have undertaken (following the

same lettering as in the paragraph above):

(a) to divest Mobil's gas trading entity in the Netherlands;

(b) to divest Exxon's 25% interest in Thyssengas GmbH (Germany), a long-distance gas wholesale transmission company and to reduce certain voting rights in Erdgas Münster, a short-distance gas wholesale transmission company (Germany);

(c) to offer for sale certain Mobil rights in depleted reservoirs around Munich (Germany);

(d) to divest certain base oil businesses;

(e)+(f) to divest Mobil's share in Aral (a motor fuel retailing company active in Germany, Austria and Luxembourg) and in the fuels part of the BP/Mobil JV (active in motor fuel and lubricants production and retailing within Europe);

(g) to divest Exxon's aviation lubricants' business and

(h) to divest certain pipeline capacity servicing Gatwick Airport.

On 9 June 1999, the Commission decided after an initial investigation of one month that it would further investigate the impact of the transaction on competition conditions in the above markets and in those for the exploration, development and production of crude oil and natural gas. The Commission indicated that it would also look to "Gas-to-Liquids" technology.

Exploration, development and production of crude oil and natural gas

The further investigation has dispelled the initial doubts expressed by the Commission that the recent concentrations among major competitors (the merged entity together with Shell arid the BP Amoco take-over of Atlantic Richfield Corporation, investigated at the same time), might result in too small a cluster of oil companies capable of searching for and developing unexplored reserves that will be consumed 10 to 15 years from now, thereby producing effects incompatible with the common market.

The "super majors" would still be facing competitive constraints from smaller oil companies and the countries on whose territory oil and gas is found have no incentives to let oil companies restrict production. In addition, smaller explorers indicated that, because of size differences, they would not compete for the same type of exploration rights and they would not be dependent on the bigger explorers to sell their oil.

Gas-to-Liquids technology

This technology enables natural gas to be converted into finished fuels at the production site. Exxon and Mobil have strong patent positions in alternative GTL technologies. However, even if the parties held an essential portfolio of patents, this would still not give rise to a dominant position, given the small impact on petroleum product markets of products produced with the technology in question.

Wholesale transmission of natural gas in the Netherlands

Gasunie is the dominant Dutch wholesale transmission company; Exxon has a 25% share in it. Mobil is one of two competitors of Gasunie and, as a consequence of an agreement between the Gasunie shareholders, Mobil would stop competing with Gasunie after the merger. As the Merger Regulation also applies to the strengthening of the dominant position of a third party (Gasunie), the parties have committed themselves to divesting Mobil's Dutch trading entity together with its supply and transport contracts.

Long-distance wholesale transmission of natural gas in Germany

The existing oligopoly within Germany or the single dominant positions within their region of the main (that is, long-distance) wholesale transmission companies such as Ruhrgas (in which Exxon and Mobil are shareholders), BEB and Thyssengas (both of which are jointly controlled by Exxon and other companies) would be strengthened as Mobil, one of the smallest long-distance companies, also operates on this market and is a shareholder of Ruhrgas. The parties will divest Exxon's share in Thyssengas and will give up majority voting rights in Erdgas Münster, the only potential competitor.

Storage of natural gas in the South of Germany

Ruhrgas has a dominant position in this market which would be strengthened as Mobil has concession rights in almost all depleted fields capable of being converted in storage facilities; and this would constitute a barrier to entry for any potential competitor). The parties will offer for sale Mobil's interest up to a certain volume at a market price.

Group I Base oils in the EEA

The merged entity would, with a 40-45% share, become dominant on the EEA market for base oils (an ingredient to produce lubricants). The parties will either divest certain base oil businesses or pass over control of these businesses by way of long-term leases.

Distribution of fuels

In view of the equity links between Exxon, BP/Mobil and Aral (in which Mobil is an important equity holder) and the other structural factors of the industry in these countries, the transaction would have created or strengthened dominant positions in the distribution of fuels in Germany, Austria, the Netherlands, the UK and on French toll motorways. The parties have offered to dissolve the fuels part of the BP/Mobil joint venture and to sever the connection with Aral.

World-wide aviation lubricants

Exxon and Mobil each have a market share of more than 40%, so that the

merged entity would have a single dominant position. The parties have offered to divest Exxon's aviation lubricants business which has more of a stand-alone character than Mobil's business. This allows the eventual purchaser to compete independently.

Aviation fuels at Gatwick

The merger would lead to the creation of a single dominant position of the parties on this market in view of their supply position (43%) and control over an important part of the infrastructure (pipelines linking refineries with the airport) and, especially, the only pipeline with spare capacity. The parties will divest their interests in certain of the pipelines concerned.

Co-operation with other anti-trust authorities

The UK competition authorities had requested, pursuant to Article 9 of the Merger Regulation, a referral of a part of the case, namely, motor fuel retailing in the North West of Scotland, back to the UK. However, the Commission dealt with these concerns as part of the Commission's assessment of the UK motor fuel retailing market. The dissolution of the fuels element of the BP/Mobil joint venture will also solve any particular concerns related to the North West of Scotland.

In accordance with the bilateral agreement of 1991 on antitrust co-operation with the US, the Commission has co-operated with the Federal Trade Commission in assessing the transaction, in particular with regard to (a) the possible impact of the operation on the exploration and production of crude oil and natural gas and (b) the world-wide aviation lubricants market. The procedure in the US is still pending. □

Motor Vehicle Industry (III): State Aid for Daimler-Chrysler

The Commission has decided to authorise regional aid of€28.8m to be granted by Spain for investment aimed at producing a new commercial vehicle at the Daimler-Chrysler plant in Vitoria (Basque Country). The project involves the production of a 2.6t van called the NVC2, which will replace the Vito.

Productive investments totalling €595m for the period 1999-2002 will enable a production line with a capacity of 90,000 units to be built. A total of 2,800 jobs will be created or safeguarded in the long term. The Commission concludes that the planned regional aid, which has an intensity of 6.7%, satisfies the rules of the Community framework for state aid to the motor vehicle industry. (Source: Commission Statement IP/99/709, dated 29 September 1999.)