C/2024/7270

5.12.2024

**Summary of Commission Decision**

**of 17 May 2023**

**declaring a concentration compatible with the internal market and the functioning of the EEA Agreement**

**(Case M.10438 – MOL/OMV SLOVENIJA)**

*(notified under document C(2023) 3183)*

**(Only the English version is authentic)**

(C/2024/7270)

*On 17 May 2023 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings* [1]*, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision, can be found in English on the website of the Directorate-General for Competition, at the following address: https://competition-cases.ec.europa.eu/search*

## 1. THE PARTIES

(1) MOL Hungarian Oil and Gas Plc. ('MOL' or the 'Notifying Party'), headquartered in Hungary, is the parent company of the MOL Group, a vertically integrated oil and gas conglomerate whose principal activities are: (i) the exploration, production and refining of crude oil; (ii) the distribution of refined oil products both at wholesale and retail level; (iii) the production and sale of petrochemicals; (iv) the exploration and production of natural gas; and (v) the transmission of natural gas in Hungary. In Slovenia, the MOL Group operates a network of 53 fuel stations under the MOL and INA brands, and it is also active in the wholesale supply of motor fuels, bitumen, heating oil, liquefied petroleum gas ('LPG'), and lubricants. MOL is also present, through its subsidiary INA, in a number of retail and wholesale markets in Croatia such as the supply of motor fuels (diesel and gasoline), AdBlue, heating oil or bitumen.

(2) OMV SLOVENIJA, trgovina z nafto in naftnimi derivati, d.o.o. ('OMV Slovenija' or the 'Target'), headquartered in Slovenia, operates 119 fuel stations in Slovenia under the OMV, OMV Viva, Diskont, Avanti and EuroTruck brands and is also active in the wholesale supply of motor fuels, heating oil and bitumen. OMV Slovenija also makes certain ex-refinery sales of gasoline, which are carved out from the scope of the Transaction and will remain with the OMV Group. In Croatia, OMV Slovenija has very limited activities in the wholesale of motor fuels, heating oil and heavy fuel oil.

## 2. THE OPERATION

(3) On 13 May 2022 the Commission received notification of a proposed concentration pursuant to Article 3(1)(b) of Regulation (EC) No 139/2004 (the 'Merger Regulation') by which MOL intends to acquire from the OMV Group sole control over OMV Slovenija by way of purchase of shares (the 'Transaction'). MOL and OMV Slovenija are collectively referred to as the 'Parties'.

(4) On 22 June 2022, based on the initial market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA agreement and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the 'Article 6(1)(c) Decision'). Specifically, the Commission raised concerns in relation to the market for the retail supply of motor fuels in Slovenia to business-to-consumer (B2C) customers from off-motorways stations (or, given the specific features of the Slovenian market, from 'non-DARS stations') [2]. Moreover, the Commission could not exclude serious doubts in relation to the markets for the retail supply of motor fuel to business-to-business (B2B) customers in Slovenia and for the wholesale supply (ex-refinery and non-retail) of gasoline and diesel in Slovenia.

[1] OJ L 24, 29.1.2004, p. 1.

[2] Družba za avtoceste v Republiki Sloveniji (DARS) is a state-owned company that maintains all the motorways and expressways in Slovenia and that grants concessions to fuel station operators.

(5) On 15 July 2022, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation requiring the Parties to supply the complete information that had been required by the Commission in different requests for information sent to the Parties. These decisions suspended the time limit referred to in Article 10(3) of the Merger Regulation pursuant to Article 9(1) of Commission Regulation (EC) No. 802/2004 ([3]).

(6) On 17 March 2023, the Notifying Party formally submitted commitments and remaining required information, which brought an end to the suspension of the time limit and resulted in the restarting of the clock on 20 March 2023. The Commission then launched a market test on the commitments submitted. Based on the results of the market test, and the assessment of the commitments, the Commission concluded that the revised commitments eliminate the competition concerns identified by the Commission arising from the proposed Transaction.

## 3. **SUMMARY**

(7) The Commission raised competition concerns as to the compatibility with the internal market with regard to the retail supply of motor fuels in Slovenia to business-to-consumer (B2C) customers from non-DARS stations.

(8) Based on the results of the market test, and the assessment of the commitments, the commitments eliminate the competition concerns identified by the Commission arising from the proposed Transaction

(9) Therefore, a clearance decision pursuant to Article 8(2) of the Merger Regulation is proposed for adoption.

## 4. **RELEVANT PRODUCT MARKETS**

(10) In the Decision, the Commission found that the Transaction gives rise to the following horizontally affected markets:

(a) non-retail supply of diesel and gasoline in Slovenia;

(b) non-retail supply of heating oil in Slovenia;

(c) wholesale supply of bitumen in Slovenia;

(d) retail supply of motor fuels in Slovenia;

(e) retail supply of AdBlue in Slovenia;

(f) non-retail supply of diesel and gasoline in Croatia;

(g) non-retail supply of heating oil in Croatia; and

(h) non-retail supply of heavy fuel oil in Croatia.

(11) Furthermore, the Transaction gives rise to the vertically affected markets, the main ones being in relation to the links between the following markets:

(a) the ex-refinery supply of diesel and gasoline (upstream markets) and the non-retail supply of diesel and gasoline (downstream markets) in Slovenia; and

(b) the wholesale (ex-refinery and non-retail) supply of diesel and gasoline (upstream markets) and retail supply of diesel and gasoline (downstream markets) in Slovenia.

## 5. **COMPETITIVE ASSESSMENT**

(12) This Section focuses on the market where the Commission considered that the Transaction could significantly impede effective competition, i.e. the market for the retail supply of motor fuels in the market for the retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia.

([3]) Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1).

5.1.1. *Horizontal non-coordinated effects in the market for the retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia*

(13) The Transaction, as initially notified, could lead to a significant impediment of effective competition in the market for the retail fuel supply from non-DARS stations to B2C customers for the following reasons:

(a) The Parties will have combined high market shares at national level ([40-50 %] by volume) and at local level there are 85 problematic catchment areas where (i) the Parties' joint market share would be higher than [40-50 %] and (ii) the Parties' joint market share would increase by more than 5 percentage points post-Transaction;

(b) the Parties are close competitors in Slovenia, and Petrol is the only player that competes as closely. Specifically, the Parties' networks overlap to a very significant extent, they offer similar services, and they operate under brands that are well known in the market;

(c) the Transaction would remove an important competitive force from the market. MOL is a dynamic player that offers new products and services; has refurbished all of its stations in recent years; has significantly expanded its network through organic and inorganic growth; and it has greatly increased its brand awareness;

(d) Petrol, which will remain the main player, is likely to benefit from any price increases by the new entity and therefore would have a reduced incentive to compete compared to the situation absent the Transaction. The remaining smaller players do not represent credible competitive constraints;

(e) there are significant barriers to entry and expansion, and B2C customers are price takers without any countervailing power.

5.1.2. *Horizontal coordinated effects in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations*

(14) The Commission considers that the Transaction may give rise to horizontal coordinated effects in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations.

(15) In relation to the ability to reach terms of coordination, a number of past and ongoing investigations in the EEA suggest that the market for the retail supply of motor fuels is prone to coordination, mainly due to the homogeneous nature of fuel products and the transparency of the market. These market features are typical also for the Slovenian market, which in addition is also particularly concentrated. In Slovenia, demand and supply levels have been relatively stable over time and the market is highly transparent, i.e., prices are published on the government-dedicated website called "Goriva" and are known to all market participants almost in real-time.

(16) In relation to sustainability of coordination, the high transparency of the market favours monitoring of price deviations from the artificially high prices resulting from coordination. For the same reasons, deviation from price levels resulting from potential coordination can be easily detected and retaliation could be immediate.

(17) In relation to the reaction of outsiders, actual and potential competitors would not be able to jeopardise any coordination strategies because of their lack of meaningful presence in the market and high barriers to entry.

(18) Finally, the Transaction would have an impact on the new entity's incentives to coordinate as the market will become even more concentrated. Going from three to two sizeable players means that monitoring competition would become easier. Also, MOL' incentives to bolster competition would likely be reduced post-Transaction, because MOL will have become much more sizeable. The new entity and Petrol's market shares at national level would also become much more symmetrical, which would make coordination more plausible and successful.

## 6. **COMMITMENTS**

(19) In order to render the Transaction compatible with the internal market, MOL undertook to divest a nation-wide retail network of 39 fuel stations in Slovenia currently operating as part of the fuel station networks of the Parties (20 MOL stations and 19 OMV stations) (the 'Divestment Business', the 'Commitments'), to Shell Adria d. o. o. (the 'Purchaser').

(20) The Commission concludes that, considering the Commitments submitted by the Parties, the notified concentration will not lead to a significant impediment of effective competition in the market for retail fuel supply from non-DARS stations to B2C customers as a result of unilateral non-coordinated or coordinated effects.

(21) In relation to non-coordinated effects, the undertakings ensure that in none of the 85 problematic areas identified by the Commission the following two conditions are cumulatively met: (i) the Parties' share is above 40 %, and (ii) the Parties' joint share will increase by more than 5 percentage points post-Transaction. Further, the undertakings will create a significant third player on the national market in Slovenia that will act as a strong competitive force capable of exerting competitive pressure on the new entity: the Purchaser will replace MOL's role as a third competitive force in the market.

(22) Also, in relation to coordinated effects, the risk of coordination will not increase post-Transaction: similarly to MOL's role pre-Transaction, the Purchaser will act as an external competitive force capable of challenging any potential coordination between Petrol and MOL.

(23) The market test results were positive for the undertakings submitted by MOL, confirming that (i) the proposed remedy is suitable to address the competition concerns identified by the Commission, (ii) that with the Divestment Business the Purchaser would be a credible player, (iii) the Divestment Business is viable and (iv) the assets included in the remedy package are appropriate in scope.

## 7. **CONCLUSION**

(24) For the reasons mentioned above, the decision concludes that, subject to full compliance with the Commitments given, the proposed concentration will not significantly impede effective competition in the internal market or in a substantial part of it.

(25) Consequently the concentration should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.