Opinion of the Advisory Committee on mergers at its meeting of 2 July 2020 concerning a preliminary draft decision relating to Case M.9014 — PKN Orlen/Grupa Lotos

Rapporteur: Belgium

(2021/C 196/03)

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 Markets

3. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant product markets, and in particular that:

   3.1. there is a single wholesale market for the supply of diesel, gasoline and LHO in Poland, with no segmentation between ex-refinery and non-retail sales;

   3.2. the market for the wholesale supply of fuels should be segmented by fuel (i.e. between diesel, gasoline, LHO and jet fuel);

   3.3. the market for the supply of jet fuel excludes avgas, which constitutes a product market separate from jet fuel;

   3.4. the market for the supply of jet fuel should be segmented between ex-refinery supply of jet fuel and into-plane supply of jet fuel;

   3.5. the market for the into-plane supply of jet fuel should be segmented between supply by into-plane suppliers and throughputters on the one hand, and resellers on the other hand;

   3.6. there is an overall market for the retail supply of motor fuels (on-motorway sales constituting a segment) which can be further segmented between B2B sales and B2C sales;

   3.7. the supply of each different type of bitumen should be distinguished as distinct markets, i.e. the supply of standard bitumen, the supply of modified bitumen and the supply of industrial bitumen.

Geographic markets

4. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant geographic markets for the wholesale supply of diesel, gasoline and LHO, namely that they are national in scope.

5. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant geographic markets for the retail supply of motor fuels, namely that they are national in scope with local elements.

6. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant geographic markets for the ex-refinery supply of jet fuel, namely that they are national in scope for supply to customers in Poland and either national or wider comprising an area including Czechia, Poland, Slovakia, Hungary and East-Germany for supply to customers in Czechia.

7. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant geographic markets for the into-plane supply of jet fuel, namely that they are airport-wide.

8. The Advisory Committee (11 Member States) agrees with the Commission's definitions of the relevant geographic markets for the supply of standard bitumen, the supply of modified bitumen and the supply of industrial bitumen, namely that they are national in scope.

Competitive Assessment

9. 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 and/or due to vertical effects with regard to the following markets:

   9.1. markets for the wholesale supply of diesel, gasoline and LHO in Poland;

   9.2. the overall retail market for the supply of motor fuels (and the on-motorways segment) and the retail markets for the supply of motor fuels to B2C and B2B customers in Poland;

   9.3. the upstream and downstream markets for the wholesale supply of motor fuels (upstream) in Poland and for the retail supply of motor fuels (downstream) in Poland;

   9.4. the markets for the ex-refinery supply of jet fuel to customers in Poland and in Czechia;

   9.5. the market for the into-plane supply of jet fuel at all airports in Poland;

   9.6. the upstream and downstream markets for the ex-refinery supply of jet fuel to customers in Poland (upstream) and the into-plane supply at all airports in Poland (downstream);

   9.7. the upstream and downstream markets for the ex-refinery supply of jet fuel to customers in Czechia (upstream) and the into-plane supply at Prague airport (downstream);

   9.8. the markets for the supply of standard, modified and industrial bitumen in Poland.

10. The Advisory Committee (11 Member States) agrees with the Commission's assessment that the Transaction would not significantly impede effective competition further to the relation between the Parties' activities in:

   10.1. the market for the supply of HFO in Poland (or wider);

   10.2. the market for the supply of car washes services;

   10.3. the ex-refinery supply of jet fuel to customers in Estonia (*i.e.* narrowest plausible market);

   10.4. the markets for the supply of the different types of bitumen outside Poland ([1]);

   10.5. the market for the supply of Group I base oils in the EEA;

   10.6. the market for the supply of mineral industrial and automotive lubricants in Poland;

   10.7. the market for bunkering services in Poland;

   10.8. the market for the supply of isomerate in Poland;

   10.9. the upstream and downstream markets for the supply of isomerate (upstream) and the wholesale supply of gasoline (downstream);

   10.10. the upstream and downstream markets for the supply of mandatory storage services (upstream) and the wholesale supply of fuels (downstream);

   10.11. the upstream and downstream markets for the supply of rail freight and transport services (upstream) and the wholesale supply of fuels and fuel-related products (downstream);

   10.12. the upstream and downstream markets for the exploration, development of crude oil and natural gas (upstream) and the wholesale supply of fuels and fuel-related products (downstream);

   10.13. the upstream and downstream markets for the supply of Heavy Fuel Oil in Poland (upstream) and for the generation of electricity and heat (downstream);

   10.14. the upstream and downstream markets for the supply of slack wax (upstream) and the supply of paraffin wax (downstream);

([1]) Markets for the supply of standard bitumen in Austria, Czechia, Estonia, Latvia, Lithuania, Romania and Slovakia, markets for the supply of modified bitumen in Latvia and Lithuania, and markets for the supply of industrial bitumen in Austria and Czechia.

10.15. the upstream and downstream markets for the supply of Group I base oils (upstream) and lubricants (downstream) in Poland;

10.16. the upstream and downstream markets for the supply of Heavy Fuel Oil (upstream) and the supply of bunkering services (downstream);

10.17. the upstream and downstream markets for the ex-refinery supply of marine gas oil (upstream) and the supply of bunkering services (downstream).

Commitments

11. The Advisory Committee agrees with the Commission that the Final Commitments address the competition concerns in relation to the markets for:

11.1. the wholesale supply of diesel, gasoline and LHO in Poland; (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.2. the retail supply of motor fuels in Poland (and the on-motorways segment); (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.3. the retail supply of motor fuels to B2C and B2B customers in Poland; (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.4. the wholesale supply of motor fuels in Poland (upstream) and the retail supply of motor fuels in Poland (downstream); (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.5. the ex-refinery supply of jet fuel to customers in Poland; (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.6. the ex-refinery supply of jet fuel to customers in Czechia; (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.7. the into-plane supply of jet fuel at all airports in Poland; (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.8. the ex-refinery supply of jet fuel to customers in Poland (upstream) and the into-plane supply at all airports in Poland (downstream); (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.9. the ex-refinery supply of jet fuel to customers in Czechia (upstream) and the into-plane supply at Prague airport (downstream); (9 Member States voted in favour. 2 Member States abstained. No Member State voted against.)

11.10. the markets for the supply of standard, modified and industrial bitumen in Poland. (10 Member States voted in favour. 1 Member State abstained. No Member State voted against.)

12. The Advisory Committee 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. 9 Member States voted in favour. 2 Member States abstained. No Member State voted against.

Compatibility with the Internal Market

13. 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. 9 Member States voted in favour. 2 Member States abstained. No Member State voted against.