EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Aramco Overseas Company B.V.
Scheveningseweg 62 - 66
2517 KX, The Hague
The Netherlands

Subject: **Case M.10697 – ARAMCO/OVERSEAS COMPANY / LOTOS SPV1*
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 27 September 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Aramco Overseas Company B.V. ("AOC" or the "Notifying Party", the Netherlands), controlled by Saudi Arabian Oil Company (Saudi Arabia), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Lotos SPV 1 Sp. z o.o. (the "Target" or "Wholesale Divestment Business", Poland) by way of a purchase of shares (the "Transaction"). AOC and the Target are hereinafter together referred to as the "Parties".[3]

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* Should read: 'ARAMCO OVERSEAS COMPANY / LOTOS SPV1'.

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 385, 6.10.2022, p. 27.

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1. THE PARTIES

(2) AOC provides its affiliates in the Saudi Aramco group with a wide range of services including finance support services, supply chain management, technical support services and a variety of administrative support services. AOC is in the process of acquiring a number of businesses which previously belonged to Grupa Lotos S.A. ("Lotos", Poland), including a non-controlling 30% stake in Lotos's Gdańsk refinery (the "Gdańsk Shareholding Divestment Business") and a jointly controlling stake in Lotos-Air BP Polska* ("LABP"), a joint venture active in the into-plane supply of jet fuel, separately notified and approved by the Commission in case M.10696 – *Aramco Overseas Company / BP Europa / Lotos-Air BP Polska*.[4]

(3) The Target is a special purpose vehicle and a wholly-owned subsidiary of Lotos (now Orlen, see paragraph (4)) active in the wholesale distribution of fuels in Poland.

2. THE OPERATION

(4) By decision of 14 July 2020 adopted in application of Article 8(2) of the Merger Regulation, the Commission declared the operation by which Polski Koncern Naftowy ORLEN S.A., ("Orlen", Poland) acquired within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Lotos compatible with the internal market and with the EEA Agreement, subject to full compliance with the commitments submitted by Orlen and Lotos.[5]

(5) In particular, in order to remove the competition concerns identified in the Commission's decision in that case, Orlen and Lotos committed to divest, or procure the divestiture of several businesses. Among other businesses, Orlen and Lotos committed to divest the Gdańsk Shareholding Divestment Business and Lotos's wholesale fuel-supply business, the latter being the Target.

(6) In application of these commitments, the concentration consists of the acquisition of sole control by AOC over the Target. Pursuant to a Preliminary Share Purchase and Demerger Agreement dated 11 January 2022, AOC will acquire 100% of the share capital of the Target.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Saudi Aramco: EUR 339 billion; Target: […]). Both have an EU-wide turnover of more than EUR 250 million (Saudi Aramco: […]; Target: […]), and only the Target achieves more than two-thirds of its aggregate EU wide turnover within one and the same Member State (Poland).[6] The notified

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* Should read: 'Lotos-Air BP Polska sp. z o.o.'

4 The acquisition of the Gdańsk Shareholding Divestment Business is not subject to EU merger control, as it does not involve an acquisition of control. It will be reviewed by national competition authorities.

5 M.9014 – *PKN Orlen / Grupa Lotos*, decision of 14 July 2020.

6 Turnover calculated in accordance with Article 5 of the Merger Regulation.

operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(8) The Target currently operates in Poland in the wholesale supply of fuels: gasoline, diesel and light heating oil ("LHO"). The Target does not currently supply aviation fuels.

(9) Saudi Aramco has limited activities in the EEA in the wholesale supply of certain fuels, including gasoline, diesel, LHO and aviation fuel. Saudi Aramco is not currently active in these businesses in Poland.

(10) AOC's plan is for the Target to be responsible for the future wholesale of the fuels processed at the Gdańsk refinery by the Gdańsk Shareholding Divestment Business. These include aviation fuels. Therefore, following the sale of the Gdańsk Shareholding Divestment Business, the Target will also be active in the ex-refinery sales of aviation fuels, including jet fuel.

4.1. Ex-refinery supply of aviation fuels

4.1.1. Product market

(11) In previous decisions, the Commission has defined relevant product markets for the wholesale supply of fuels as separate from the retail supply of fuels.[7] The Commission has also further divided the markets for the wholesale supply of fuels by fuel type, i.e.: (i) gasoline, (ii) diesel, (iii) liquefied petroleum gas (LPG), (iv) LHO, (v) heavy fuel oil (HFO), and (vi) aviation fuel due to their different characteristics, use and purchasers.[8]

(12) With respect to the supply of aviation fuel, the Commission distinguished between: (i) ex-refinery supply, and (ii) into-plane (retail) supply.[9] The Commission has also considered a distinction between two different types of aviation fuel: jet fuel and aviation gasoline.[10] The Notifying Party does not contest the Commission's previous findings.

(13) The results of the market investigation also did not provide reasons for the Commission to depart from the findings in its past decisions.[11] For the purposes of this decision the exact market definition for the ex-refinery supply of aviation fuels can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market regardless of the market definition adopted.

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7 E.g., M.9626 – *PKN ORLEN / ENERGA*, para. 36; M.4545 – *Statoil/Hydro*, paras. 19-21; M.4348 – *PKN Orlen/Mazeikiu*, para. 8.

8 E.g., M.9626 – *PKN ORLEN / ENERGA*, para. 36; M.7318 – *Rosneft/Morgan Stanley Global Oil Merchanting Unit*, para. 14; M.4934 – *Kazmunaigaz / Rompetrol*, para. 6; M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, paras. 165 ff.

9 E.g., M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, para. 881; M.7965 - *World Fuel Services Corporation/Certain aviation fuels assets belonging to Exxon*, para 14; M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, para. 876.

10 Jet fuel is a kerosene based fuel used in turbine engine aircraft (typically larger commercial aircraft), and aviation gasoline is a gasoline-based fuel typically used in smaller private piston engine aircraft, see M.9014, paragraph 894 and footnote 1068.

11 See responses to Question 3, eQ1 to customers, and to Question 1, eQ2 to competitors.

(14) In line with its previous findings, the Commission will conduct its assessment on the basis of a separate market for the ex-refinery supply of aviation fuels, and more precisely on the narrowest plausible segment, i.e. the ex-refinery supply of jet fuel.[12]

4.1.2. Geographic market

(15) In the *PKN Orlen/Grupa Lotos* decision, the Commission considered national markets for the wholesale supply of diesel, gasoline and LHO, as well as ex-refinery supply of jet fuel, rather than wider-than-national or even EEA-wide markets.[13] The Notifying Party does not contest the Commission's previous findings.

(16) The results of the market investigation also did not provide reasons for the Commission to depart from the findings in its past decisions.[14] For the purposes of this decision the exact market definition for the ex-refinery supply of aviation fuels in Poland can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the market definition adopted.

(17) In line with its previous findings, the Commission will conduct its assessment on the basis of a national Polish market.

4.2. Into-plane (retail) supply of aviation fuels

4.2.1. Product market

(18) In previous Commission decisions, the Commission has defined a separate market for into-plane supply of aviation fuels. The Commission has further considered that there are three types of suppliers providing into-plane supplies of aviation fuels at airports:[15]

- Into-plane suppliers, which supply the largest quantities of aviation fuels to airline companies and other smaller suppliers active at the airport (throughputters and resellers, see below). Into-plane suppliers have direct access to the distribution infrastructure at the airports.

- Throughputters, which supply aviation fuels to airline companies as well as to resellers, but do not own or control any fuelling infrastructure at the airports.

- Resellers, which supply aviation fuel to various customers at the airport, usually acquiring the fuel at wingtip (i.e., once it has passed through the infrastructure of the airport and is readily available to be supplied to the end-customer).

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12 Considering that the Parties are not active on the upstream market for the wholesale of aviation gasoline, and only marginally on the downstream market for the into-plane supply thereof, and that no vertically or horizontally affected markets would arise in respect of aviation gasoline, the Commission's assessment will focus on the ex-refinery supply of jet fuel.

13 M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, paras. 268, 986.

14 See responses to Question 5, eQ1 to customers.

15 M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, paras. 883 to 886.

(19) In *PKN Orlen/Grupa Lotos*, the Commission considered separate product markets for (i) into-plane supply of aviation fuels by both suppliers and throughputters on the one hand, and (ii) into-plane supply of aviation fuels by resellers on the other.[16]

(20) Further, in that same case, the Commission considered that the into-plane supply of aviation gasoline is to be distinguished from the into-plane supply of jet fuel. Considering that the Transaction would only give rise to vertically affected markets as regards the into-plane supply of jet fuel, this decision will not further discuss aviation gasoline.

(21) The Notifying Party does not contest the Commission's previous findings.[17]

(22) The results of the market investigation also did not provide reasons for the Commission to depart from the findings in its past decisions.[18] For the purposes of this decision the exact market definition for the into-plane supply of aviation fuels can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the market definition adopted.

(23) In line with its previous findings, the Commission will conduct its assessment on the basis of a market for into-plane supply of aviation fuel by both suppliers and throughputters, excluding into-plane sales by resellers.

4.2.2. Geographic market

(24) In previous decisions, the Commission consistently found that the relevant geographic scope for the into-plane supply of jet fuel could be limited to each specific airport.[19]

(25) The Notifying Party does not contest the Commission's previous findings but submits that the ultimate definition of the geographic scope of the relevant markets can be left open.[20]

(26) The majority of respondents to the market investigation confirmed the Commission's findings in its past decisions.[21] For the purposes of this decision the exact market definition for the into-plane supply of aviation fuels at specific airports in Poland can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market, even on the narrowest plausible geographic market, that is airport-specific markets.

(27) In line with its previous findings, the Commission will conduct its assessment on the basis of separate markets for each specific airport in Poland.

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16 M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, paras. 887 *et seq*.

17 Form CO, paragraph 70.

18 See responses to Question 4, eQ1 to customers, and to Question 2, eQ2 to competitors.

19 E.g., M.9014 - *Polski Koncern Naftowy Orlen S.A. / Grupa Lotos S.A.*, para. 1052. See also, M.5880, *Shell/Topaz/ JV*, para. 22; M.5422, *StatoilHydro/ ST1/ ST1 Avifuels JV*, para. 15; M.5005, *Galp Energia/ ExxonMobil Iberia*, para. 39; M.3110, *OMV/ BP ('Southern German Package')*, Para. 27; M.1628, *TotalFina/ Elf*, para. 228; M.1383, *Exxon/Mobil*, para. 812.

20 Form CO, paragraph 72.

21 See responses to Question 5, eQ1 to customers, and responses to Question 3, eQ2 to competitors.

5. COMPETITIVE ASSESSMENT

(28) The activities of the Parties overlap with respect to the wholesale supply of fuels in the EEA. However, the combined share of the Parties would not exceed 20% in the wholesale supply of any of the fuels supplied by the Parties in the EEA, and the Saudi Aramco group has no relevant activities in Poland where the Target is solely active. Therefore, the Transaction does not give rise to any horizontally affected markets.

(29) The Transaction gives rise to potential vertically affected markets:

- upstream: the ex-refinery supply of jet fuel in Poland (Market share: Target, following completion of the Gdańsk Shareholding Divestment Business transaction, approx. [10-20]%), and

- downstream: the into-plane supply of jet fuel (by suppliers and throughputters) at certain airports in Poland (Market share: AOC, through LABP, between [30-40]% and [90-100]% at certain airports in Poland).

(30) The Notifying Party and the Saudi Aramco group currently have limited activities in the ex-refinery supply of jet fuel in the EEA. In Poland, the Notifying Party and the Saudi Aramco group are currently not active in the ex-refinery supply of jet fuel. AOC will only become present in Poland through LABP following its acquisition of the Gdańsk Shareholding Divestment Business as described at paragraph (5) above, leading to a future estimated share of around [10-20]%, as shown in Table 1 below.* The Target does currently not have any activities in the ex-refinery supply of jet fuel.

Table 1 – Volume and market shares of attributable Gdańsk Shareholding Divestment Business in the EEA and Poland, 2020[22]

Product	Total market size (KT)	30% of the Gdańsk refinery's production (KT)	Hypothetical Estimated share (%)
EEA			
Jet Fuel	[…]	[…] (30%*[…])	[0-5]%
Poland			
Jet Fuel	[…]	[…] (30%*[…])	[10-20]%

Source: Form CO, Tables 4a and 4b.

(31) The Notifying Party and the Saudi Aramco group are not present in the downstream into-plane supply of jet fuel in Poland, and will only become active in this segment through the acquisition of LABP. The estimated share of LABP in into-plane supply of jet fuel in Poland would remain below 20%, as shown in Table 2 below, although LABP has an estimated share of more than 30%, and as high as [90-100]%, at certain airports in Poland, as shown in Table 3 below.

* Should read: 'AOC will only become present in Poland following its acquisition of the Gdańsk Shareholding Divestment Business as described at paragraph (5) above, leading to a future estimated share of around [10-20]%, as shown in Table 1 below.'

22 The Wholesale Divestment Business currently having no activities in the ex-refinery supply of jet fuel, it has been omitted from this table.

Table 2 – Into-plane supply of jet fuel in Poland in 2020

Supplier	Volume (KT)	Est. market share (%)
LABP	[…]	[10-20]%
Saudi Aramco	0	0
Combined	[…]	[10-20]**%**
Orlen	[…]	[80-90]%
Total	[…]	100%

Source: Form CO, Table 7.

Table 3 – Into-plane supply of jet fuel in Poland on an airport-by-airport basis in 2020 and 2021

Airport	Jet Fuel Business* estimated share		Orlen estimated share	
	2020	2021	2020	2021
Lech Wałęsa Airport	[80-90]%	[90-100]%	[5-10]%	[0-5]%
Katowice International Airport	[10-20]%	[40-50]%	[80-90]%	[50-60]%
Lublin Airport	[90-100]%	[90-100]%	[0-5]%	[0-5]%
Olsztyn-Mazury Regional Airport	[90-100]%	[90-100]%	[0-5]%	[0-5]%
Poznań-Ławica Airport	[10-20]%	[30-40]%	[80-90]%	[60-70]%

Source: Form CO, Table 8.

5.1. Analytical framework

(32) The legal test for the assessment of vertical effects of a merger is set out in the Merger Regulation and the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-horizontal Merger Guidelines').[23]

(33) According to the Non-horizontal Merger Guidelines, foreclosure effects in a vertical scenario may occur where actual or potential rivals' access to supplies (i.e. input foreclosure) or markets (i.e. customer foreclosure) is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[24]

(34) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, whether it would have the incentive to do so, and whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[25] Those conditions are cumulative.[26]

(35) Similarly, in assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines whether the merged entity would have the

* Should read: 'LABP'.

23 OJ C 265, 18.10.2008, p. 6.

24 Non-horizontal Merger Guidelines, paragraph 18.

25 Non-horizontal Merger Guidelines, paragraph 32.

26 See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.

ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, whether it would have the incentive to reduce its purchases upstream, and whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[27] Those conditions are cumulative.[28]

5.2. No competition concerns in vertically affected markets

5.2.1. No input foreclosure

5.2.1.1. Notifying Party's view

(36) The Notifying Party argues that the Transaction will not lead to any competition concern in the vertically affected markets, primarily based on its view that the vertical links between the upstream ex-refinery sale of jet fuel and the downstream into-plane sale of jet fuel are pre-existing, as Aramco is assuming the previous ownership interests in Lotos Paliwa and of Lotos in LABP.[29]

5.2.1.2. The Commission's assessment

(37) Based on the Commission's findings, the Parties could not profitably engage in an input foreclosure strategy post-Transaction.

(38) Regarding the Notifying Party's argument of pre-existing vertical links, the Commission notes that Aramco is recreating the vertical links that existed prior to the Transaction.

(39) In substance, there is no risk of input foreclosure arising from the Transaction, as the Target was not supplying competitors on the downstream market prior to the Transaction. The only competitor active on the downstream market (Orlen) has alternative sources of supply of jet fuel. In any event, the Target will have only a limited presence on the upstream market, with a market share of only approximately [10-20]%. Given Orlen's strong market position both on the up- and downstream markets, the Parties would not be able to foreclose Orlen from any significant input.

(40) In addition, market participants responding to the market investigation did not raise any concerns with regard to the Transaction.[30]

5.2.2. No customer foreclosure

5.2.2.1. Notifying Party's view

(41) As described above, the Notifying Party argues the Transaction will not lead to any competition concern in the vertically affected markets, primarily due to a lack of merger-specificity of the vertical integration.[31]

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27 Non-horizontal Merger Guidelines, paragraph 59.

28 See Judgement of the General Court in case T-370/17 – KPN v Commission, paragraph 119.

29 Form CO, paragraph 86.

30 See responses to Questions 11-12, eQ1 to customers and responses to Questions 6-7, eQ2 to competitors.

31 Form CO, paragraph 86.

5.2.2.2. The Commission's assessment

(42) Regarding the Notifying Party's argument of pre-existing vertical links, the Commission refers to its assessment at paragraph (38) above.

(43) In any event, there is no risk of customer foreclosure arising, as LABP [information on sources of supply of LABP]. Therefore, the Transaction will not bring about a new vertical integration, as Lotos was a co-controlling shareholder of LABP prior to the divestment of the latter.

(44) In addition, even assuming that LABP would purchase all of AOC's upstream production of jet fuel ex the refinery in Gdańsk, [information on sources of supply of LABP], the only competitor in the ex-refinery jet fuel supply in Poland, in order to cover its needs.

(45) The results of the market investigation also did not indicate any risk of customer foreclosure arising from the Transaction.[32] Indeed, in line with the Commission's findings in case M.9014, the market investigation confirmed that LABP's market position in Poland as a customer of jet fuel ex-refinery is limited and its presence independently from Orlen will rather improve effective competition in the market.[33]

(46) In conclusion, the proposed Transaction would not give rise to competition concerns as a result of non-horizontal effects as regards the ex-refinery supply and into-plane supply of jet fuel to customers in Poland.

6. CONCLUSION

(47) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[32] See responses to Questions 11-12, eQ1 to customers and responses to Questions 6-7, eQ2 to competitors.

[33] See responses to Question 7, eQ1 to customers.