European Commission - Press release

Mergers: Commission opens in-depth investigation into PKN Orlen's proposed acquisition of Lotos

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The European Commission has opened an in-depth investigation to assess the proposed acquisition of Lotos by PKN Orlen, under the EU Merger Regulation. The Commission is concerned that the merger may reduce competition in the supply of fuels and related markets in Poland and neighbouring countries.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: "*The proposed acquisition of Lotos by PKN Orlen would affect several strategically important energy markets. The Commission will investigate whether the proposed acquisition would reduce competition and lead to higher prices for or less choice of fuels and related products for business customers and end consumers in Poland and other Member States"*.

PKN Orlen and Grupa Lotos ("Lotos") are two large Polish integrated oil and gas companies. They are both mostly active in Poland, where they own the only two existing refineries, but they also have activities in several other Central and Eastern European (CEE) countries as well as in the Baltic countries.

Both companies have a wide portfolio of products and are both active across the whole value chain of the supply of fuels, including:

- the **wholesale supply** of fuels, such as diesel, gasoline or jet fuel. The wholesale supply of fuels comprises two levels: "ex-refinery" supply, where only companies having direct access to fuel are active (namely producers and importers) and " non-retail" supply, where other wholesalers also sell fuels to smaller retailers and other end-customers;
- the **retail supply of fuels,** such as **motor fuels** and **jet fuel (fuels into planes)**;
- the related markets of **by-products** of the refining process (such as bitumen, and lubricants) and the provision of **associated services**, such as mandatory storage.

The Commission's competition concerns

At this stage, the Commission is concerned that the proposed transaction would reduce competition in several markets where the merged entity would be active. In particular, the Commission is concerned that the proposed transaction could lead to higher prices and less choice for business customers and end-consumers of several products, especially at fuel stations and airports.

More specifically, the Commission's initial investigation found that:

- For the **wholesale supply of fuels**, the transaction would lead to the creation of a quasi-monopoly at ex-refinery level in Poland, since it would combine the only two companies owning a refinery in the country. The merged entity would also become the market leader at non-retail level in the supply of diesel, gasoline and other fuels. As PKN Orlen and Lotos are the only two domestic suppliers in Poland, imports are the only potential alternative. However, imports are limited due to significant barriers such as a lack of infrastructure and storage and regulatory requirements. Specifically in the wholesale supply of jet fuel, PKN Orlen and Lotos are the only suppliers in Poland and Estonia and the merged entity would also become the market leader in Czechia.
- For the **retail supply of fuels**, the proposed transaction would remove a very strong competitor of PKN Orlen (which is currently the largest player in Poland) in the retail supply of motor fuels. After the transaction, the merged entity would be approximately four times larger than the next competitor and would be unlikely to face significant competitive pressure. With respect to the retail supply (into planes) of jet fuel, the proposed transaction would eliminate PKN Orlen's only competitor at a number of airports.
- For **by-products**, the transaction would remove a very strong integrated competitor and/or reinforce PKN Orlen's position in the supply of bitumen in Poland, Czechia, Lithuania, Slovakia, Latvia and Estonia, as well as in the supply of lubricants in Poland.

- The Commission at this stage also has concerns regarding the **provision of mandatory storage services**, since PKN Orlen and Lotos account for a large share of the storage available in Poland.

In addition, considering the volumes of fuels held by PKN Orlen and Lotos in both the upstream and downstream markets for fuels, the Commission is concerned that the merged entity would have the ability and incentive to **stop supplying its downstream rivals**, thus shutting them out of the markets.

The Commission will now carry out an in-depth investigation into the effects of the transaction to determine whether its initial competition concerns are confirmed.

The transaction was notified to the Commission on 3 July 2019. The Commission now has 90 working days, until 13 December 2019 to take a decision. The opening of an in-depth investigation does not prejudge the outcome of the investigation.

Companies and products

PKN Orlen is a Polish integrated oil and gas company. It owns one of the two refineries existing in Poland as well as refineries in Lithuania and in Czechia. PKN Orlen is active on the wholesale and retail markets for refined oil products in Poland, Austria, Czechia, Estonia, Latvia, Lithuania, Germany and Slovakia. It also has activities in the upstream exploration, development and production of crude oil and natural gas. In addition, PKN Orlen is active in the petrochemicals market.

Lotos is a Polish integrated oil and gas company. It owns the other Polish refinery. Lotos is active on the wholesale and retail markets for refined oil products, mostly in Poland but also in Czechia, Lithuania, Slovakia, Latvia and Estonia. As PKN Orlen, it is also active in the upstream exploration, development and production of crude oil and natural gas. In addition, Lotos is active in the petrochemicals market.

Merger control rules and procedures

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days (Phase I) to decide whether to grant approval or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are currently three ongoing Phase II merger investigations: the proposed acquisition of Bonnier Broadcasting by Telia Company, the proposed acquisition of Aleris by Novelis and the proposed acquisition of Innogy by E.ON.

More information will be available on the Commission's competition website, in the public case register under the case number M.9014.

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