ACQUISITIONS (BANKS): THE BSCH CASE

Subject: Acquisitions
National laws

Industry: Banking
(Some implications for other industries)

Parties: Banco Santander Central Hispano (BSCH)
Champalimaud Group
Banco Totta & Açores (BTA)
Crédito Predial Português (CPP)
Mundial Confiança (MC)

Source: Commission Statement IP/00/21, dated 12 January 2000

(Note. Unless this decision is challenged in the Courts, which seems highly unlikely, it appears to be the end of the story. The most interesting feature of the story is the indignation of the Commission at the decision by the Portuguese authorities last year to prohibit the proposed acquisition. This was a matter for itself, the Commission claimed; not something which the Portuguese government had any authority to determine. Legally, the Commission is on the face of it quite right; but the case reflects the wider political tension between national policies and laws and the policies and laws of the European Union. On the merits of the case, the Commission found that the effect of the acquisition would be to create a new entity with a market share of only about 11% and that this did not amount to the creation or strengthening of a dominant position in Portugal's retail banking sector.)

The Commission has authorised the acquisition by Banco Santander Central Hispano (BSCH), a leading Spanish bank, of Banco Totta & Açores (BTA) and Crédito Predial Português (CPP). This acquisition will increase the presence of BSCH in Portugal. However, the investigation carried out on the basis of the Merger Regulation has shown that it will not create or strengthen a dominant position in the country's retail banking sector where the market share of the new entity will only be ± 11%. The operation replaces an earlier deal between BSCH and Champalimaud which the Commission had authorised on 3 August 1999 and which, due to the Portuguese authorities' intervention in defiance of EU rules, had given rise to a conflict between the EU executive and Portugal.

Competition Commissioner Mario Monti welcomed the final result in this case which had generated numerous headlines for the last six months. "This shows that European competition rules have an important role to play in the creation of a genuine single market. It should also serve as a lesson that Member States must not try and prevent the opening to non-nationals of the financial services sector. There have been few transnational mergers so far in this key sector for the single market. I did therefore consider it particularly important that an operation which does not raise competition concerns can go ahead."

BTA and CPP are two Portuguese banks controlled by the insurance company Mundial Confiança (MC) which, in turn, is controlled by António Champalimaud. The operation will be preceded by an exchange of shares between BSCH and Mr Champalimaud through which BSCH acquires 51.8% of the Champalimaud group, and the latter 4.14% of the shares of BSCH. BSCH will immediately resell its participation in MC to Caixa Geral de Depósitos (CGD), a State owned Portuguese credit entity, which will then take the necessary steps in order to guarantee the sale of BTA and CPP to BSCH.

The initial operation authorised by a Commission decision of 3.8.1999 (see the report in our November, 1999, issue, page 262) was based on an agreement between BSCH and Mr Champalimaud under which BSCH would have obtained 40% of the holding companies in the Champalimaud group. The Portuguese Minister of Finance decided to oppose the operation by administrative decision on 18th June 1999. The Commission then intervened to prevent the Portuguese government from blocking the concentration and declared incompatible with Community law all the measures taken against the agreements between BSCH and Mr Champalimaud. The decision of the Commission was based on Article 21 of the EC Merger Regulation, which grants the Commission exclusive powers to assess concentrations having a "Community dimension". The Portuguese Government has explicitly revoked (after the announcement by the parties of the new agreement) the prohibition it adopted on 18 June.

"This has been a test case for the implementation of merger control law in the European Union," Mr Monti stressed. "The Commission has vigorously defended its competence [sc., its jurisdiction]. It is only by respecting established procedures that we provide companies with the legal security they require when engaging in increasingly frequent cross-border operations." ■

The BP / Mobil Case

MERGERS (OIL): THE BP / MOBIL CASE

Subject Mergers
Conditions (of approval)

Industry Oil

Parties Exxon Mobil Corporation
BP Amoco plc
BP/Mobil

Source Commission Statement IP/00/106, dated 3 February 2000

(Note. Undertakings given by parties to a merger, that they will divest certain of their interests, are often required by the Commission as a condition of approval of the merger; and sometimes the manner in which the undertakings are carried out, or the actual nature

of the undertakings offered by the parties, is insufficient to persuade the Commission that the merger should be approved. In the present case, however, the Commission is satisfied that the dissolution of a joint venture between the parties to the merger meets the requirements which it had imposed. Outside observers can be forgiven for being somewhat bemused by the commercial minuet in which the dancers include BP, Exxon, Mobil and Atlantic Richfield: not least because some aspects of the changes taking place in the European and American oil industry are being challenged by the US authorities and are not a matter for the European Union authorities alone.)

The Commission has agreed to dissolution of BP/Mobil Joint Venture, a European fuel and lubricants producer and retailer; the dissolution was a condition of the Exxon/Mobil merger clearance decision. The Commission has authorised two acquisitions whereby Exxon Mobil Corporation (USA) and BP Amoco plc (BPA) (UK) each acquire certain parts of the BP/Mobil Joint Venture, active on the European fuel and lubricants markets. The acquisitions are the result of an undertaking given by Exxon Corporation and Mobil Corporation to secure Commission approval for their merger earlier last year.

In its decision of 29 September 1999 assessing the Exxon/Mobil merger, the Commission identified competition problems on the fuel retailing markets in Austria, Germany, Luxembourg, the Netherlands, the United Kingdom and on French motorways. Competition concerns were also identified on the EEA market for Group 1 base oils, an important ingredient for finished lubricants. To secure the Commission's approval of the Exxon/Mobil merger, Exxon and Mobil undertook to sell the joint venture's fuels assets as well as two of its base oil manufacturing plants.

Shortly afterwards Exxon/Mobil and BP Amoco (BPA) agreed on the way to dissolve the joint venture. BPA acquired the fuels assets, two base oil manufacturing plants and a substantial part of the joint venture's finished lubricants business. Exxon/Mobil retained some of the other base oil plants and a part of the finished lubricants business.

By its latest decisions, the Commission has formally approved the two transactions which had triggered the threshold criteria for formal notification under the Merger Regulation. In the Commission's view, positive decisions were warranted because,on the one hand, the transactions resolved competition problems on the fuel and base oil markets and, on the other hand, they were pro-competitive as BPA was re-established as an independent competitor on the finished lubricants markets. In these markets the Commission had not identified a competition problem resulting from the Exxon/Mobil merger. ■