ACQUISITIONS (OIL): THE TOTALFINA ELF CASE

Subject:	Acquisitions Conditions (of approval)
Industry:	Oil; service stations
Parties:	TotalFina Elf Carrefour and others
Source:	Commission Statement dated 7 November 2000

(Note. Cases concluded under the Mergers Regulation often contain a reference to the conditions on which the operation is approved. The interest of the present report lies in the description of the way in which the parties complied with the conditions imposed by the Commission when TotalFina acquired Elf Aquitaine earlier this year. The conditions concerned the sale of service stations to third parties; and it is also interesting to note that the proposed list of purchasers originally put forward by TotalFina Elf was rejected by the Commission, whose aim is to avoid "oligopolistic structures in fuel distribution".)

The Commission has given its agreement to the purchase by Carrefour, Agip, Avia and other companies of 70 motorway service stations belonging to TotalFina Elf. A sell-off of this kind was one of the main conditions imposed by the Commission when it allowed the takeover of Elf Aquitaine by TotalFina at the beginning of the year. If the new TotalFina Elf had kept all of its service stations, it would have secured a dominant position on the French motorways. The arrival of companies such as Carrefour should ensure that customers can enjoy the benefit of effective competition on fuel prices.

On 9 February the Commission authorised the takeover of Elf Aquitaine by TotalFina, one condition being that the new TotalFina Elf was to give up 70 motorway service stations. TotalFina Elf came forward with a proposed list of buyers, but on 13 September the Commission refused to approve that list, on the grounds that the buyers proposed would not have had the necessary incentive to bring sufficient competitive pressure to bear on the merged company. This was the first time the Commission had formally rejected proposed buyers; that fact and the attention given to the sale of the 70 service stations are evidence of the Commission's determination to prevent the establishment or reinforcement of oligopolistic structures in fuel distribution.

The new list of buyers submitted by TotalFina Elf comprises Agip (21 service stations), Thévenin et Ducrot/Avia (12 stations), Picoty/Avia (5 stations), Avia Autoroute (4 stations), BP (3 stations), Carrefour/Carfuel (17 stations), Esso (4 stations) and Shell (4 stations). All of these already operate on the market in the sale of fuel. All of them have a substantial presence on French off-motorway markets, with the exception of Agip. Agip does operate on a number of adjacent geographic markets, namely Germany, Switzerland, Italy and Spain. All of the buyers are able to supply the service stations independently of TotalFina Elf. The Commission has concluded that they are viable competitors. None of them has links with TotalFina Elf in terms of capital holdings, or any commercial dependence on it. The presence of Carrefour among the buyers should also help to create a more competitive environment on the French motorways. Like other chains of large and medium-sized supermarkets, Carrefour has traditionally exerted effective competitive pressure on the integrated oil companies on the French off-motorway retail market.

The approval of this list of buyers of service stations follows approvals already given to buyers of other assets, especially in petroleum products logistics, which TotalFina Elf agreed to dispose of in order to secure authorisation for the merger. There are still some assets for which TotalFina Elf has to submit the names of buyers for the Commission's approval. ■

The EMI / Time Warner Case

EMI Plc and Time Warner Inc have informed the Commission that they have decided to terminate their agreement and to withdraw the notification they had submitted to the Commission for regulatory clearance. In view of this, the Commission will not take any decision with regard to the notified operation. On 5 May 2000, EMI and Time Warner notified to the Commission an agreement by which they would have combined their music recording and publishing businesses. On 14 June the Commission opened an in-depth investigation over concerns that the operation could create a collective dominant position in national European markets for recording music, a single dominant position in national markets for music publishing, and a single dominant position in the markets for on-line music and software based music. The Commission formalised its preliminary position to the companies in a statement of objections on August 22. EMI and Time Warner submitted undertakings on 19 September the deadline, in this deal, for offering remedies -- which proved insufficient to meet the Commission's concerns. Despite the fact that the deadline had expired, the Commission continued discussions with the parties in order to find a solution. During that process, EMI and Time Warner provided informal proposals that improved substantially the initial remedies. But the Commission still had doubts and in view of the late stage of the procedure could not properly evaluate the undertakings. The Commission will obviously review any new modified agreement that the parties might reach. The Commission is also reviewing Time Warner's proposed merger with AOL, which was the subject of a separate regulatory filing.

Source: Commission Statement IP/00/1122, dated 5 October 2000.