

DECISION no. 05 / 25.01.2010

on the analysis of economic concentration achieved by SC OLTCHIM SA Ramnicu-Valcea, by acquiring direct sole control over the assets relating to activities of petrochemical industries located on the platform ARPECHIM Pitesti, previously owned by SC Petrom SA Bucharest

File no. RS-59/23.12.2009

COMPETITION COUNCIL

under:

1. Decree no.700/27.04.2009 for appointing the Competition Council President, published in the Official Gazette of Romania, Part I, nr.284/30.04.2009;
2. Decree no.701/27.04.2009 for appointing the Competition Council Vice President, published in the Official Gazette of Romania, Part I, nr.284/30.04.2009;
3. Decree no.1087/08.09.2006 on appointing a member of the Competition Council Plenum, published in the Official Gazette of Romania, Part I, 767/08.09.2006;
4. Decree no.702/27.04.2009 on appointing the Competition Council Vice President, published in the Official Gazette of Romania, Part I nr.284/30.04.2009;
5. Competition Law 21/1996, republished;
6. Regulation of the organization, operation and procedure of Competition Council, with subsequent modifications;
7. Regulation on the authorization of economic concentrations;
8. Guidelines on relevant market definition in order to establish a significant market share;
9. Guidelines on calculation of turnover behavior in cases stipulated in Article 5 paragraph 1 of the Competition Law 21/1996 and in cases of economic concentration;
- 10.Guidelines regarding the application of Article 33 of the Competition Law 21/1996, of the authorization fee of economic concentrations;
- 11.Order no. 24/19.01.2010of the President of the Competition Council;
- 12.Notification registered with RS-59/23.12.2009 at the Competition Council;
- 13.Note of the Industry and Energy on the analysis of economic concentration, registered DIE/45/19.01.2010.

Taking into consideration:

1. The economic concentration was achieved by SC Oltchim SA Ramnicu Valcea by acquiring from SC Petrom SA Bucharest, the sole direct activity related assets on petrochemical Platform ARPECHIM Pitesti, processes within the meaning of Article 10, paragraph 2, b) of the Competition Law 21/1996 republished and *Regulation on the authorization of economic concentrations*.
2. The economic concentration is based on the asset transfer agreement concluded on December 18, 2009, between SC Oltchim SA Ramnicu Valcea, as purchaser and SC Petrom SA Bucharest, as seller.
3. The operation notified by the SC Oltchim SA Ramnicu Valcea is an economic concentration within the meaning of Article 10 paragraph 2 b of the Competition Law 21/1996, republished, that exceeds the thresholds stipulated in Article 14 of the same law. Therefore, in accordance with Article 15 paragraph 1 of the Act, this operation is subject to control and had to be notified to the Competition Council.
4. The notification of the transaction was submitted by SC Oltchim SA Ramnicu Valcea, the Competition Council on 23.12.2009 and registered with nr.RS-59. Notification of economic concentration effective on 11/01/2010.
5. According to the Constitutive Act of the SC Oltchim SA Ramnicu Valcea, the main activity of such companies is the manufacture of other basic organic chemicals - CAEN code 2014. Besides the main activity, SC Oltchim SA Ramnicu Valcea has included in the object of activity a number of subsidiary activities. Synthetic, the main activities of the company are: the design and manufacture of chlor-alkali products, plastics, oxo-alcohols, petrochemical products, heat, other chemicals, including service and technical support and marketing of products and services to domestic and export.
6. SC Oltchim SA Ramnicu Valcea uniquely and directly controls SC SISTEMPLAST SA Ramnicu Valcea, OLTCHIM GmbH Germany and Italy OLTCHIM Unipersonale SRL Italy, companies that have objects of activity different from the objects of the SC Oltchim SA Ramnicu Valcea.
7. Also, SC Oltchim SA Ramnicu Valcea is a minority shareholder, owning stakes of less than 50% of shares/social parts, the other 5 companies, respectively: SC PROTECTCHIM SRL Ramnicu Valcea, SC MENTCHIM SA Ramnicu Valcea, SC DESIGN EN SA Ramnicu Valcea, SC OLTQUINO SA Ramnicu Valcea and SC EURO Urethane SRL Ramnicu Valcea. Key decisions in terms of strategy and management of these companies are the General Assembly of Shareholders where voting SC Oltchim SA Ramnicu Valcea is a minority.
8. In terms of assets subject to the economic concentration operation, the production activity that is conducted through them was stopped since November of 2008. Related installations came into conservation situation, and now, following the production activity to be resumed after their acquisition by SC Oltchim SA Ramnicu Valcea.

9. Taking into account the productive activity which took place in the assets acquired and the effects of investment proposed by SC Oltchim SA Ramnicu Valcea in these activities, the activity that can be conferred on these assets is the manufacturing of petrochemical products consisting of ethylene, propylene, ethylene oxide, monoethyleneglycol, polyethylene of high and low density and aromatic compounds.

10. Relevant markets related to economic concentration analysis were defined as:

- production and sale of ethylene market,
- production and sale of propylene market
- production and sale of high density polyethylene (HDPE) market,
- production and sale of low density polyethylene (LDPE) market,
- production and sale of aromatic compounds (benzene, toluene, xylene) market,
- production and sale of ethylene oxide,
- production and sale of methyleneglicole market,

on the entire Romanian territory.

11. The economic concentration analysis is a vertical integration of the activity carried on the petrochemical platform ARPECHIM with the activity of SC Oltchim SA Ramnicu Valcea, as product markets in which were acquired assets from SC Petrom SA Bucharest is situated in the upstream markets in which it operates SC Oltchim SA Ramnicu Valcea, between the two being relationships such provider - customer (acquired assets from SC Petrom SA Bucharest provides some of the raw material necessary to OLTCHIM SA Ramnicu Valcea).

12. The activity on ARPECHIM petrochemical platform was designed by the foundation in order to provide an integrated system to combine work with OLTCHIM Ramnicu Valcea. Ethylene is used as raw material for production of polyethylene of low and high density of ethyl-benzene and ethylene oxide in plants, part of the petrochemical purchased by SC Oltchim SA Ramnicu Valcea.

13. Propylene is the raw material for production of polypropylene, the oxo-alcohols, and propenoxidului, which are raw materials for production-polyether polyol, a polycarbonate and styrene.

14. As for petrochemical products related to the activity located on the platform ARPECHIM there were no other manufacturers in the period 2006-2008, on the Romanian market being present only imports of these products, the segments owned by SC Oltchim SA Ramnicu Valcea on the relevant markets defined are in fact the share markets of SC Petrom SA - Branch ARPECHIM Pitesti, owned prior to the implementation and operation of economic concentration that had these values, in 2008:

- [...] % production and sale of ethylene market,
 - [...] % production and sale of propylene market,
 - [...] % production and sale of high density polyethylene (HDPE) market,
 - [...] % production and sale of low density polyethylene (LDPE) market,
 - [...] % production and sale of aromatic compounds (benzene, toluene, xylene) market,
- on the entire Romanian territory.

15. In 2008, the assets acquired by SC Oltchim SA Ramnicu Valcea from SC Petrom SA Bucharest were not present on the markets of producing and selling ethylene and methyleneglicole throughout the country.
16. Through the economic concentration achieved, the segments owned by the assets acquired, on the defined relevant markets, does not change, because before acquiring the control over by SC Oltchim SA Ramnicu Valcea, neither it nor the controlled companies were not present in these markets.
17. On the defined relevant markets, throughout the country, supply is represented mainly by Branch ARPECHIM Pitesti - related activity petrochemical assets owned by SC Petrom SA Bucharest and imports from countries like Hungary, Bulgaria, Serbia, Czech Republic, Poland, Germany, Turkey etc.
18. Due to unfavorable economic conditions the demand for products from the defined relevant markets decreased during 2006-2009. The main beneficiary of ethylene and propylene products was SC Oltchim SA Ramnicu Valcea, other products consisting of high density polyethylene, low density polyethylene and aromatic compounds being marketed to both domestic and abroad in countries like Germany, Switzerland and Italy.
19. The economic concentration achieved by SC Oltchim SA Ramnicu Valcea, by acquiring direct sole control over the assets related to the petrochemical activity on platform ARPECHIM, from SC Petrom SA Bucharest, is a vertical integration of activities of the parties involved and does not have the effect of significant restricting, prevention or distortion of competition.
20. Analysis has shown that economic concentration operation notified represents a vertical integration of activities of parties involved and does not have the effect of creating or strengthening a dominant position on the defined relevant markets, a position that could lead to restriction or significant distortion of competition these markets.
21. Thus, although the economic concentration achieved by SC Oltchim SA Ramnicu Valcea by acquiring direct sole control over the assets relating to activities of petrochemical industries located on the platform ARPECHIM Pitesti, previously owned by SC Petrom SA Bucharest, falls under the Competition Law 21/1996, republished, there are no serious doubts regarding its compatibility with a normal competitive environment.

Pursuant to art.21 paragraph 2 of the Competition Law 21/1996, republished, and paragraph 10 of Article 8 b of the Rules of organization, operation and procedure of procedure, with subsequent modifications

DECIDES

Article 1. In accordance with the provisions of art.46 paragraph 1 b of the Competition Law 21/1996, republished, non-objection is issued this decision on economic concentration is to be achieved by SC Oltchim SA Ramnicu Valcea by acquiring direct sole the activity of petrochemical related assets located in Pitesti ARPECHIM industrial platform, previously owned by SC Petrom SA Bucharest, observing that although the notified operation falls within the scope of the law, there are no serious doubts on the compatibility with a normal competitive environment.

Article 2. Authorization fee, provided under art.32 of the Competition Law 21/1996, republished, is [...] RON and shall be paid by the acquirer, SC Oltchim SA Ramnicu Valcea, in less than 30 days from the communication of this Decisions, by treasury payment order at the state budget, with the mention „Fees and charges for issuing licenses and running authorization”. A copy of the payment order shall be forthwith sent to the COMPETITION COUNCIL.

Article 3. Within 5 days after submission to the territorial units of the Ministry of Finance of the annual financial statements at 31.12.2009, resulted following the commercial activity related to assets held by the activity of petrochemical industries located on the platform ARPECHIM Pitesti, previously owned by SC Petrom SA Bucharest, the company OLTCHIM SA Ramnicu Valcea will submit to the Competition Council a note on calculation of turnover tax in order to establish the definitive authorization, in accordance with Instructions given in the application of art. 33 of the Competition Law no. 21/1996, of the authorization fee for economic concentrations, as well as copies of the final financial statements. Competition Council reserves the right to recalculate the amount of the tax authority in the situation that turnover calculated based on final data differ significantly from the provisional figure, considered when calculating the fee provided for in Art. 2 of this decision. This decision becomes effective on the date of its communication to the acquirer.

Article 4. Competition Council's Decision can be appealed with the art.47 paragraph 4 of the Competition Law 21/1996, republished, within 30 days of the communication, at Bucharest Court of Appeal, Administrative and Fiscal Department.

Article 5. In accordance with article 57 paragraph 1 of the Competition Law 21/1996, republished, this Decision will be published on the website of the COMPETITION.

Article 6. The Industry and Energy and the General Secretariat will follow up the implementation of this Decision.

Article 7. This decision shall be forthwith communicated by the General Secretariat of the COMPETITION COUNCIL, to:

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