



Final Report of the Hearing Officer¹
Nynas / Shell / Harburg refinery assets
(COMP/M.6360)

THE CONCENTRATION

- (1) On 19 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which Nynas AB ("Nynas", Sweden), controlled by Petróleos de Venezuela S.A ("PDVSA", Venezuela) and Neste Oil Oyj, ("Neste Oil", Finland), acquires sole control within the meaning of Article 3(1)(b) of the Merger Regulation of part of Shell Deutschland Oil GmbH (Germany) by way of purchase of Harburg BOMP and certain parts of the Refinery (the "Harburg refinery assets").
- (2) The notified transaction relates to the Harburg refinery assets that are necessary to produce distillates from crude oil. The Harburg refinery assets represent the basis of Shell's current market presence for base and process oils in the EEA and are therefore a part of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation.
- (3) The notified transaction consists of a 25-year-lease of the Harburg refinery assets, including a put-option for Shell and a call-option for Nynas enabling them to convert the lease agreement into an asset-deal. The operation will give Nynas control over the Harburg refinery assets on a lasting basis and thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

OVERVIEW OF THE PROCEDURE

- (4) On 26 March 2013, the Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.
- (5) A Statement of Objections ("SO") was sent to the Notifying Party on 19 June 2013.
- (6) The Parties submitted their response to the SO on 8 July 2013. Shell submitted a supplementary response on 10 July 2013.
- (7) Following these responses, the Commission has come to the conclusion that the concentration will not significantly impede effective competition and must be

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

² Council Regulation (EC) No 139/2004 on the control of concentration between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

THIRD PERSON

- (8) Ergon Europe Mea, Inc. ("Ergon") applied and was granted the status of interested third person within the meaning of Article 18(4) of the Merger Regulation.
- (9) In accordance with Article 16(1) of Commission Regulation (EC) No 802/2004³, Ergon was informed by the Directorate-General for Competition of the nature and subject matter of the proceedings, and was given the right to submit written comments within a set time limit.

ACCESS TO THE FILE

- (10) The Notifying Party was given access to the file on 20 June 2013 and on 9 August 2013. In addition, a data room was organized to allow the external counsels of Nynas and Shell to have access to confidential versions of some documents from Ergon, which the case team relied upon, among other documents, for its competitive assessment.
- (11) As I did not receive any complaint from the parties, I consider that their procedural rights in respect of access to the file have been observed.

DRAFT DECISION

- (12) Pursuant to Article 16(1) of Decision 2011/695/EU, the Final Report shall consider whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views.
- (13) Upon review of the draft decision, I conclude that it does not deal with any objection in respect of which the Notifying Parties have not been afforded the opportunity of making known their views.

CONCLUSION

- (14) Overall, I conclude that all participants in the proceedings have been able to effectively exercise their procedural rights in this case.

Brussels, 22 August 2013

(signed)
Wouter WILS

³ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 33, 30.4.2004, p. 1 (the "Merger Implementing Regulation").