



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.11.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Case No IV/M.1013 - Shell UK/Gulf Oil (Great Britain)**

1. On 27 October 1997 Shell UK Limited ("Shell UK") notified an operation by which it will acquire sole control of Gulf Oil (Great Britain) Ltd ("GOGB").

**I THE PARTIES**

2. Shell UK is the UK operating company of the Royal Dutch/Shell Group of Companies ("the Shell Group"). The Shell Group is active world-wide in the exploration, production and sale of oil and natural gas, and in the production and sale of chemicals and coal.

3. GOGB is a UK-based oil refining and marketing company which is part of Chevron UK Limited (“Chevron UK”). Chevron UK is in turn the UK operating company of the Chevron Corporation, which is involved world-wide in gas and oil exploration, production, refining and marketing, and the production and sale of chemicals and coal.

## **II THE OPERATION**

4. The notified operation is the purchase by Shell UK of the entire issued share capital of GOGB. However, certain GOGB assets and subsidiaries which are not part of the sale package will be transferred out of GOGB before the notified operation, and do not fall to be considered under this notification. Neither GOGB’s Milford Haven refinery nor its 50% interest in the Pembroke Cracking Company are included in the sale. These intra-group transfers do not fall to be considered under the Merger Regulation. The assets which will remain in GOGB for the purposes of the notified operation are three petrol distribution terminals in the UK at Cardiff, West Bromwich and Ellesmere Port, a 5% share in the ‘Mainline pipeline’ which runs from Milford Haven to Trafford Park and Nottingham, a 50% interest in a lubricants blending plant at Silvertown in East London, and 215 owned petrol service stations spread across much of the UK.

## **III THE CONCENTRATION AND COMMUNITY DIMENSION**

5. The operation is an acquisition of sole control by Shell UK and is accordingly a concentration under Article 3(1)(b) of the Merger Regulation.
6. The Shell Group’s world-wide turnover in 1996 was in excess of ECU 100 000 million and its Community-wide turnover in excess of ECU [...]<sup>1</sup> million. The 1996 world-wide and Community-wide turnover of the GOGB operations to be included in the concentration was in excess of ECU [...]<sup>2</sup> million. The Shell group does not earn more than two-thirds of its Community-wide turnover in a single Member State.
7. The turnover for the year ended in 1996 attributable to those GOGB operations to be included in the concentration was over ECU [...]<sup>3</sup> million. All these revenues arose in the Community, either in United Kingdom or in Ireland, with ECU [...]<sup>4</sup> million earned in the United Kingdom and ECU [...]<sup>5</sup> million in Ireland.
8. The operation therefore has a Community dimension. The notification does not fulfil the criteria under Article 2 of Protocol 24 to the EEA Agreement to be treated as a co-operation case under that Agreement.

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1 Deleted business secret, exceeding 250 million ECU

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## **IV COMPATIBILITY WITH THE COMMON MARKET AND WITH THE FUNCTIONING OF THE EEA AGREEMENT**

### **A Relevant product markets**

#### *1(a) Forecourt fuel sales*

9. In the BP/Mobil decision (case no IV.M/727), and in the current notification, a distinction was drawn between ‘retail’ and ‘non-retail’ fuel sales, the term ‘retail’ being applied exclusively to ‘forecourt sales’, with all other sales, whether to intermediaries or final users, treated as ‘non-retail’. However, in the interests of avoiding potential confusion, in the following assessment the terms ‘retail’ and ‘non-retail’ have been replaced by ‘forecourt’ and ‘non-forecourt’.
10. The customers for forecourt fuel sales are all vehicle owners who visit service stations. In the United Kingdom such sales are made not only from service stations owned or supplied by the traditional vertically integrated oil companies and independents, but also by new supermarket competitors selling fuel from their own service stations. According to the notification these now account for some 25% of UK forecourt sales.
11. A question arises as to whether, from the demand point of view, forecourt fuel sales should be further segmented into their component elements. In the United Kingdom the most relevant segmentation would be into petrol and diesel, given that petrol and diesel are not readily substitutable from the point of view of the final consumer. (Unlike in certain other European countries, UK sales of liquefied petroleum gas (“LPG”) are negligible, and have so far taken place only on a trial basis.). As to whether a petrol/diesel distinction is necessary for the present case, data supplied by the notifying party shows that the market shares of the undertakings concerned on ‘petrol only’ or ‘diesel only’ markets would not differ significantly from those to be found if the market were taken as the two together. Therefore, given that no competition concerns arise even on the most narrowly defined market, the question of whether the market is any narrower than forecourt fuel sales can be left open.

#### *1(b) Wholesale sales of forecourt fuel*

12. Supermarkets and independent oil companies without access to their own refineries have to obtain their supplies of refined fuel for forecourt sale on a wholesale basis from refiners or other bulk suppliers. Such sales are often made in large volumes direct from the refinery to the purchasers who pick up the fuel in their own tankers.

#### *2. Non-forecourt fuels*

13. Fuel sold on forecourts is typically purchased in small unit quantities with prompt payment. By contrast non-forecourt fuels distributed commercially, such as diesel, petrol, gasoil, and kerosene, are typically sold in “full lorry load” quantities and delivered to a customer’s own stockholding location. (Fuel oil is not an affected market for the purposes of the present notification and is not considered further). Except for non-forecourt petrol, which is usually sold direct to final users, customers can be either intermediate distributors, or bulk-buying final users.
14. According to the notifying party it has no reliable basis for estimating the split between sale of diesel, gasoil or kerosene made to independent distributors (as

opposed to end use customers). However, as it is understood that all refiners and most independents also supply diesel, gasoil and kerosene to independent distributors, the notifying party estimates that the shares would not be significantly greater than the combined share of Shell and GOGB on the market for the supply of diesel, gasoil or kerosene to all end-users. Except where otherwise identified, the analysis below therefore assumes that market shares for sales to distributors are of the same broad order of magnitude as sales to all buyers.

### *3(a) Non-forecourt diesel*

15. There may well be a certain degree of substitutability, at any rate for those final users with the necessary storage facilities to buy in bulk, who could switch to buying diesel on the forecourt if the unit cost of bulk-bought fuel exceeded the equivalent retail price. The cost of forecourt diesel could therefore act as a constraint on the cost of “non-forecourt” diesel. The same substitutability does not exist in the opposite direction, as purchasers of forecourt diesel without the necessary infrastructure cannot of course switch to buying in bulk if forecourt prices rise. However, given that no competition problems arise even on the narrower definition, the question of precise market definition can be left open.

### *3(b) Non-forecourt petrol*

16. There is a very small trade in “non-forecourt petrol”, which is sold in bulk to final-user customers such as police forces and health authorities with their own petrol storage facilities. Unlike other non-forecourt fuels, this type of petrol sale is generally made direct to final users, as independent distributors are generally not prepared to cope with the associated health and safety requirements (for example, there is a requirement that storage tanks be underground). The demand for bulk petrol sold in this way has been declining, probably through a combination of the increasingly stringent regulatory requirements on the storage of such petrol, and the increasing price competition for forecourt petrol sales.

### *3(c) Gasoil*

17. Gasoil is similar to diesel and in the UK has two main applications. It is used, where permitted under UK customs and excise law, for transportation purposes, such as running off-road vehicles, tractors, construction site vehicles and diesel-fired railway engines. It is much cheaper than diesel but the fact that it cannot be legally used on the road limits its potential as a substitute for diesel. Although diesel could be used instead of gasoil for off-road applications, the large price difference means that it would not be economically sensible to do so. Gasoil is also used as a liquid fuel to heat large domestic and small to medium commercial spaces such as factories and hospitals.

### *3(d) Kerosene*

18. Kerosene is a refinery product which is used primarily for domestic and commercial central heating, mainly in smaller boilers, but is also sold for industrial applications such as the manufacture of firelighters.

## *4. Lubricants*

19. The BP/Mobil decision distinguished between the two broad categories of automotive and industrial lubricants. It has not been necessary in this case to consider whether the product market was “all lubricants” or broken down into automotive and industrial lubricants, as the combined share of the undertakings even on the narrower definitions were not such as to give rise to an affected market within the meaning of Form CO, and thus the issue has not been considered further.

## **B Relevant geographic markets**

### *1. Forecourt fuel sales*

20. The notifying party contends that the markets for forecourt fuel sales can be considered as national, pointing for example, to the fact that there are different prices in different countries. An issue arose as to whether the markets might be narrower than national. On this, the evidence presented during investigation suggested that the individual and combined shares of Shell and GOGB shares on any relevant regional market in the United Kingdom would not have been significantly out of line with those for the country as a whole, and thus that there were no regions within which the combined market shares would be high enough to give rise to competition concerns. The question therefore of whether the markets are national or narrower than national can be left open.
21. The market for wholesale supplies of forecourt fuel is at least national and could well be wider than national. However, as competition concerns do not arise even on the narrower market, it has not been necessary to reach a precise definition and the question can be left open.

### *2. Non-forecourt fuel sales*

22. The notifying party contended that the markets for each type of non-forecourt fuel were at least national, and might be wider for some categories, pointing to the fact that some customers were international and preferred to deal with only one supplier in respect of supply to several countries. However, for the purposes of the notification figures were supplied for all categories which related only to the UK. And since no competition concerns arose on that narrower basis, the question of whether the market might be any wider was left open.

## **C Assessment**

### *1. Forecourt fuel sales*

23. The notifying party provided data based on a market defined on the basis of all forecourt fuel sales together, and also split into the relevant petrol and diesel segments. A comparison of the figures for shares of petrol and diesel taken separately, and for the two taken together, is shown in Table 1 below. It will be seen that the increment is less than [under 5%]<sup>6</sup> in all cases, and that for either ‘petrol-only’ or ‘petrol & diesel’ markets the combined market share would not exceed [under 20%]<sup>7</sup>. The highest market share would be for a ‘diesel only’ market,

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<sup>6</sup> Deleted business secret, ranges indicated

<sup>7</sup> Deleted business secret, ranges indicated

but the combined share would still be no higher than [under 25%]<sup>8</sup>. Whichever way the markets might be defined the two nearest competitors would still have market shares broadly comparable in size, and there would still remain a significant number of players who are active on the market.

**Table 1: 1996 % age shares for forecourt fuel sales (petrol and diesel)\***

	Petrol only	Diesel only	Petrol & Diesel
Shell			
Esso			
BP/Mobil			
Texaco			
Total			
Conoco			
Gulf		[...] <sup>9</sup>	
Elf			
Murco			
Kuwait			
Frost			
Supermarkets			
Others			
<b>Total market</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Source: data provided by notifying party.

24. In relation to wholesale sales of such fuel, Shell estimates that the combined share of Shell and GOGB of sales of fuel made wholesale to a UK customer base comprising other competitors in the sale of forecourt fuel (ie supermarkets and other independents) who do not have their own refineries is approximately [under 20%]<sup>10</sup>, and that this figure would not be any greater if diesel and petrol sales were considered separately). No concerns were raised by third parties and no competition concerns were identified.

<sup>8</sup> Deleted business secret, ranges indicated

<sup>9</sup> Deleted business secret

<sup>10</sup> Deleted business secret, ranges indicated

2. *Non-forecourt fuel sales*

2(a) *non-forecourt diesel*

**Table 2: % shares of UK sales of non-forecourt diesel sales, 1996**

<u>%age share of sales</u>	
Shell	
Esso	
BP/Mobil	
Texaco	
Conoco	[...] <sup>11</sup>
Phillips	
Others	
Gulf	
Total market	100,0

*Source: data provided by notifying party.*

25. Table 2 shows that the current market shares, based on 1996 volume sales in millions of litres, place Shell in third place, with a [under 15%]<sup>12</sup> market share, behind Esso, with [under 15%]<sup>13</sup> and BP/Mobil, the market leader, with [under 15%]<sup>14</sup>. The combination would mean Shell having [under 25%]<sup>15</sup>, putting it in first place, but with the two nearest competitors still having broadly similar shares.

2(b) *Non-forecourt petrol*

26. Both Shell and GOGB make sales of non-forecourt petrol, that is, sales to final users with their own petrol storage tanks. The notifying party estimates that such sales amount to about 2% of petrol sales in the UK and represent, for both Shell and GOGB, less than [under 5%]<sup>16</sup> of their total petrol sales, and that their share of the total market is no higher than their shares of sales of forecourt petrol generally. No evidence was received from competitors or customers which contradicted these estimates and no competition concerns were found to arise.

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<sup>11</sup> Deleted business secret

<sup>12</sup> Deleted business secret, ranges indicated

<sup>13</sup> Deleted business secret, ranges indicated

<sup>14</sup> Deleted business secret, ranges indicated

<sup>15</sup> Deleted business secret, ranges indicated

<sup>16</sup> Deleted business secret, ranges indicated

2(c) Gasoil

**Table 3: % age shares of UK sales of gasoil (1996)**

	<u>%share '96</u>
Shell	
Esso	
BP/Mobil	
Total	[...]¹⁷
Fina	
Conoco	
Others	
Gulf	
Total market	<u>100,0</u>

Source: data provided by notifying party.

27. The table above shows the share of the main players in terms of non-forecourt sales of gasoil. The increment brought about by the operation ([under 5%]<sup>18</sup>), would give Shell the largest proportion of sales ([under 20%]<sup>19</sup>), with Esso in second place with just over [under 20%]<sup>20</sup>. No competition concerns arise as a result of shares of this magnitude.

2(d) Kerosene

28. Both Shell and GOGB supply kerosene. Shell estimates that its share of such a market in 1996 was approximately [under 15%]<sup>21</sup>, and GOGB's share approximately [under 5%]<sup>22</sup>. Shell's share of such sales is currently declining, and it estimates that its 1997 share to date is nearer [under 15%]<sup>23</sup>. No competition concerns would arise as a result of the combination of shares of this size.

**D Vertical effects**

29. Most of the other major players in this sector are as vertically integrated as either Shell or GOGB, and no competition issues were found to arise.

**V. ANCILLARY RESTRAINTS**

30. The share purchase agreement requires that Shell, within [...]²⁴ days after completion of the notified transaction, cause the name of each company in the target group to be changed to some name not incorporating the word "Gulf" or any word resembling the same. Under the Trade Mark Licence Agreement, Chevron grants

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18 Deleted business secret, ranges indicated

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23 Deleted business secret, ranges indicated

24 Deleted business secret



Shell an exclusive licence for [...] <sup>25</sup> months to use the “Gulf” name and brand in relation to retail stations and lubricants and (ii) in relation to retail stations only, Chevron undertakes not to use the “Gulf” name for a further [...] <sup>26</sup> months (ie [...] <sup>27</sup> months in total). Insofar as these provisions might be considered as restraints, they are directly related and necessary to the implementation of the concentration.

## V. CONCLUSION

31. In view of the above the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission, Karel Van Miert

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<sup>25</sup> Deleted business secret

<sup>26</sup> Deleted business secret

<sup>27</sup> Deleted business secret