

***Case No COMP/M.3375 -  
STATOIL / SDS***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 01/07/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01-VII-2004

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Dear Sir/Madam,

**Subject: Case No COMP/M.3375 - Statoil/SDS  
Notification of 28 May 2004 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 28 May 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 by which Statoil ASA (“Statoil”), company active in the exploration and production of oil and natural gas acquires within the meaning of Article 3(1)(b) of Council Regulation 139/2004, control over the whole of Statoil Detaljhandel Skandinavia AS (“SDS”), operating network of retail stations selling motor fuel and other consumer products, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

### THE PARTIES

3. **Statoil ASA** (“Statoil”) is a Norwegian company belonging to the Statoil Group active in exploration and production of oil and natural gas, supply of gas to the European market, processing of petroleum through refining, petrochemical operations and methanol production, delivering energy and products to the retail markets in Scandinavia, the Baltic States, Poland, Russia and Ireland.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

4. **Statoil Detaljhandel Skandinavia AS** (“SDS”) is a Norwegian company, which belongs to the SDS group. The SDS group is active mainly in the retail and procurement market for petroleum products in Scandinavia (Sweden, Norway, Denmark). It operates a chain of retail service stations.

## **THE OPERATION**

5. SDS is currently jointly controlled by Statoil (50%) and ICA AB (through ICA AS 50%). The creation of this joint venture was authorised by the Commission in 1999<sup>2</sup>. As a result of the notified transaction, Statoil will acquire sole ownership and control of SDS. The transaction will be carried out through a share transfer whereby Statoil will acquire 100 % of the shares in ICA AS, which currently holds 50 % of the shares in SDS.
6. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation No 139/2004.
7. As a part of the operation, the parties agreed to continue their cooperation with respect to *inter alia* procurement and supply of daily consumer goods and licensing of the trade mark ICA Express after the completion of the notified operation. For these purposes the parties entered into a number of agreements, such as (i) framework agreement on procurement and supply of daily consumer goods; (ii) license agreement for the ICA Express trade mark; (iii) two agreements relating to SDS’s participation in the ICA’s customer card and loyalty concept; (iv) four agreements on cooperation in IT services; and (v) one agreement on outsourcing of treasury services by SDS from the Swedish branch of ICA.

## **COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Statoil EUR 32.546 billion and SDS Group EUR 3.095 billion). Each of the two undertakings concerned has a Community-wide turnover in excess of EUR 250 million (Statoil EUR 15.852 billion and SDS EUR 2.278 billion), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Pursuant to Article 1(2) of Council Regulation No 139/2004, the notified operation therefore has a Community dimension.

## **COMPETITIVE ASSESSMENT**

### *Relevant product market*

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<sup>2</sup> Case IV/M.1471 Statoil/ICA/JV, 14.7.1999

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9. The notified transaction primarily concerns the retail and non-retail markets for petroleum products in Scandinavia. In line with previous Commission decisions<sup>4</sup>, the notifying party submits that the retail channel and the non-retail channel in the sale of motor fuel and other petroleum products should be separated. This has been confirmed by the market investigation carried out in the present case.
10. SDS operates a retail network of servicing stations in Sweden, Norway and Denmark. SDS sources its motor fuel from Statoil. It also sources many other petroleum-related products centrally through Statoil Logistik either from Statoil or third parties. A vertical relationship therefore exists between the parties with respect to retail and non-retail sales of gasoline, diesel, lubricants and LPG conditioned in bottles.

#### Non-retail sales

11. According to the notifying party the non-retail channel covers sales by refiners and dealers to retailers, other resellers and commercial users including deliveries of diesel via high-speed pumps. In line with the previous Commission decisions<sup>5</sup>, the parties submit that non-retail sales of diesel and gasoline would constitute separate markets because they are not substitutable, excluding sales between oil companies at the wholesale level. However, according to the market investigation carried out by the Commission, it could be considered that diesel and gasoline belong to the same product market (fuel) in view of their substitutability from the supply point of view. In addition, it has also been pointed out that sales of diesel via high speed pumps do not belong to the non-retail sales market because these pumps are present at many retail sites. However, for the purposes of this decision the precise product market definition can be left open since, on the basis of all alternative market definitions, considered the proposed transaction will not significantly impede effective competition in particular as a result of the creation or strengthening of a dominant position.
12. As regards lubricants, which are base-oils giving the oil certain properties, it is recognised that there are different applications, but it is submitted that non-retail sales of lubricants would constitute one product market due to supply-side substitutability. The market investigation has confirmed this view. In any event, Statoil's market position would not considerably change even if a different market definition were adopted.
13. The LPG, a mixture of gases, may be sold either in bottles or in bulk. Bottles are sold usually for domestic use or to hotels whereas LPG in bulk is mostly sold to industrial customers. The notifying party submits that, considering the different regulatory requirements and ways of distribution and the fact that SDS almost exclusively purchases LPG in bottles for domestic use, only the segment of LPG conditioned in bottles for domestic use should be further examined in this case.

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<sup>4</sup> For example COMP/M.1383 Exxon/Mobil, 29.9.1999

<sup>5</sup> For example COMP/M.1383 Exxon/Mobil, 29.9.1999

14. Moreover, according to the market investigation carried out, non retail sales of LPG conditioned in bottles could belong to the same product market as LPG in bulk: suppliers of LPG in bottles who fill their own bottles in a LPG bottling plant can most likely also supply their customers with LPG in bulk because there is normally a LPG bulk storage facility connected to the LPG bottling plant. However, for the purposes of this decision the precise scope of the product market can be left open as on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

#### Retail sales

15. The notifying party submits, in line with previous Commission practice which has been confirmed in the market investigation carried out in the present case, that, at the retail level, sales of motor fuels constitute one product market without a need to distinguish between supplies of two types of motor fuel: gasoline and diesel. This is so because most retailers offer both types of motor fuel and can easily switch between them.
16. As regards lubricants, the notifying party submits that only lubricants for automotive applications are sold at retail level, whereas industrial, marine and aviation applications are sold at non-retail level. This has been confirmed by the market investigation carried out. Therefore, for the purposes of this case, only the retail sales of automotive lubricants should be considered.
17. As already mentioned above, at the retail level, LPG is only sold conditioned in bottles and SDS only sells them for domestic use. The parties therefore submit that it is sufficient in this case to assess the retail sales of LPG in bottles for domestic use. This view is in line with the market investigation carried out in this case.

#### *Relevant geographic market*

#### Non-retail sales

18. The notifying party submits that the geographic market for all the products concerned at non-retail level is national in scope since customers procure the products at a national level and they typically have nation-wide networks. Prices are also decided at a national level. This submission has been confirmed by the outcome of the Commission's investigation with the exception of lubricant where whilst smaller non-vertically integrated retailers may generally source lubricants from suppliers that are established in their own country, there is increasingly European-wide sourcing by larger international customers in particular by large retail chains; this process is gathering pace with the introduction of the EURO and the growth of E-commerce; with the price transparency of the single currency, purchasers are now increasingly seeking to rationalise their procurement processes and take advantage of their purchasing power as pan-European purchases by moving towards pan-European tendering.
19. However, for the purposes of this decision the precise scope of the geographic market can be left open as, on the basis of all alternative market definitions considered, the proposed concentration will not significantly impede effective

competition in the common market or a substantial part of it in particular as a result of the creation or strengthening of a dominant position.

#### Retail sales

20. According to the notifying party, the geographic market for all the products concerned at retail level is national in scope. This is so in particular because the important parameters of competition such as price and quality are typically decided and implemented at national level. Commission's investigation fully confirms this submission of the notifying party.

#### *Assessment*

#### Horizontal reportable markets

21. According to the notifying party, the original rationale for the creation of SDS was to combine Statoil's and ICA's respective know-how and resources in relation to developing the sale of daily consumer goods and retail motor fuels within the Statoil service station network. In connection with the creation of SDS, Statoil transferred, with the exception of the limited number of smaller automatic stations that SDS did not want to take over, its entire retail network of servicing stations in Sweden, Norway and Denmark to SDS. At the same time it retained its commercial non-retail motor fuel business.
22. The notified transaction involves a change from joint to sole control over SDS and thereby the re-acquisition by Statoil of the service stations that were transferred to SDS in 1999. Following the creation of SDS, Statoil has in principle (with the exception of a limited number of smaller automatic stations<sup>6</sup>) exited the motor fuel retail business in Sweden, Norway and Denmark. Consequently, no reportable markets on horizontal level had been identified.

#### Vertical reportable markets

23. Statoil is active in several upstream non-retail markets which are vertically related to SDS' retail business. The notifying party submits that all of these vertical relationships are a result of current supplier-customer relationships between Statoil and SDS. Accordingly, the notified transaction consisting of change from a joint to sole control, will not give rise to any new relationships between the parties. As such it will not affect their market positions. In addition to that, it should be noted that Statoil has been the sole supplier of petroleum products to SDS since its establishment and no other existing possible suppliers of SDS may therefore be foreclosed. Furthermore, on the retail side, Statoil will not be able to foreclose the retail distribution of petroleum products because apart from SDS there are strong alternative distributors present in the market.

#### *Non-retail sales of diesel and gasoline and retail sales of motor fuel*

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<sup>6</sup> Out of the original [...] small automatic filling stations ([...] in Sweden, [...] in Norway and [...] in Denmark) only [...] stations remain active ([...] in Sweden and [...] in Norway). The other stations were closed down or converted into bulk customers. The stations do not form networks, but consist of separate outlets owned and operated by dealers.

## Non-retail sales

24. As regards the non-retail sales of diesel in Sweden Statoil's market share reached [15-25]% (second largest position together with Shell with [15-25]% market share, the market leader being Preem with [25-35]%, another important competitor is Norsk Hydro with [10-20]%). In Norway, Statoil is the market leader in non-retail sales of diesel with [25-35]% market share in 2003, closely followed by Shell with [25-35]% market share in 2003. Esso with [15-25]% and HydroTexaco with [15-25]% market share follow. In Denmark, Shell is the market leader with [25-35]% market share in 2003. Statoil is the second largest seller with [15-25]% market share, followed by HydroTexaco with [15-25]% and Q8 with [15-25]% market share in 2003. If it had to be considered that sales of diesel via high speed pumps do not belong to the non-retail market Statoil's market shares would not vary substantially (they could range between [10-20]% in Sweden, [25-35]% in Norway and [15-25]% in Denmark).
25. As regards the non-retail sales of gasoline in Sweden OKQ8 is the market leader with [25-35]% market share in 2003. Statoil holds a second position in the market with [20-30]% market share, followed by Shell with [10-20]% and Preem with [10-20]% market share in 2003. In Norway, Statoil and Shell hold the leading position in the market with each having a market share of [20-30]% in 2003. Esso and HydroTexaco closely follow with market shares in 2003 exceeding [15-25]%. In Denmark, Statoil holds the weakest position of the four players with a market share of [10-20]% in 2003. The market leader is OK with [15-25]% market share. Shell and HydroTexaco are as well present in this market with market shares not exceeding [15-25]%.
26. The outcome of the investigation revealed that even if a wider relevant product market definition was considered in this case, i.e. non-retail sales of gasoline and diesel, the market shares of Statoil would be [15-25]% in Sweden, [20-30]% in Norway and [15-25]% in Denmark. If sales of diesel via high speed pumps had to be excluded from this product market, according to Statoil's estimations its market shares could range between [10-20]% in Sweden, [25-35]% in Norway and [15-25]% in Denmark.
27. In view of the above, it can be concluded that on none of the above markets Statoil holds such a position to be able to foreclose the other competing suppliers. A number of strong competitors are active in these markets. Therefore, the customers purchasing at non-retail level have sufficient access to alternative sources of supply.

## Retail sales

28. As regards the retail sales of motor fuel (i.e. sales to consumers of gasoline and diesel) in Denmark SDS's position in the market ([10-20]% market share in 2003) is limited compared to its competitors. The market leaders are OK and Shell/Metax each with [15-25]% market share. They are followed by HydroTexaco with a market share of [10-20]%. As far as the number of retail stations is concerned, SDS held in Denmark in 2003 [15-25]% of all retail stations. The largest number of retail stations is owned by Shell, [25-35]%. Whereas Esso owns [15-25]% of retail stations and HydroTexaco [15-25]%.

29. In Sweden, SDS is the second biggest supplier of motor fuel to the retail market with a market share of [20-30]% in 2003. The market leader is OKQ8 with a market share of [20-30]%. These two operators are followed by Shell and Preem each with a market share not exceeding [10-20]% in the year 2003. As regards the assessment of the position of the four players based on the number of retail stations, in Sweden OKQ8 has the largest number of retail stations ([20-30]%), followed by SDS with [10-20]%, Hydro with [10-20]% and Preem with [10-20]% in 2003.
30. In Norway, the available data relating to sales of gasoline in 2003 indicate that SDS and Shell appear to be the market leaders, each with [20-30]% market share. They are closely followed by Esso and HydroTexaco whose market shares are exceeding [15-25]% in 2003. As regards the assessment of the position of the four players based on the number of retail stations, in Norway in 2003 Shell has the largest number of retail stations ([25-35]%). All other parties' share of the total number of retail stations (including SDS) exceeds [15-25]%.
31. If sales of fuel via high speed pumps were to be included in this market Statoil's market shares would not vary substantially.

### Conclusion

32. It is clear from the foregoing data relating to non-retail and retail sales of motor fuels that SDS does not hold such a position to be able to foreclose the competitors at non-retail or retail level. As indicated previously, a number of strong competitors are active in these markets. The outcome of the investigation carried out by the Commission indicates that the notified transaction will have no significant impact on these markets.

### *Non-retail sales of lubricants and retail sales of automotive lubricants*

33. As regards the non-retail sales of lubricants in none of the three national markets concerned the market share of Statoil exceeds [20-30]% in 2003. Statoil is a market leader in Norway with a market share of [20-30]% ([20-30]% for automotive lubricants only). On this market there are at least three strong competitors in each country<sup>7</sup>. Therefore, the customers purchasing on a non-retail level have sufficient access to alternative sources of supply. If the geographic dimension of the market had to be considered as EEA-wide Statoil's market share is less than [0-5]%. The outcome of the investigation carried out by the Commission indicates that the notified transaction will have no significant impact on this market.
34. As regards the retail sales of lubricants in none of the three national markets concerned, the market share of SDS exceeds [25-35]% in 2003 (Sweden [20-30]%, Norway [10-20]% and Denmark, where SDS is the market leader [20-

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<sup>7</sup> Sweden : Mobil [15-25]%, BP Castrol [10-20]% and Shell [5-15]%, Norway : Esso [15-25]%, Hydro Texaco [15-25]%, Shell [15-25]%, Denmark OKQ8 around [25-35]%, Shell [10-20]% and Preem [10-20]%.



30]%). On each of these national markets three other strong competitors are present<sup>8</sup>.

35. Considering the position of the parties in both of these markets as well as the strength and number of competitors present therein, and as confirmed by the investigation performed by the Commission, the notified concentration will have no significant impact on the market.

*Non-retail sales of LPG conditioned in bottles and retail sales of LPG conditioned in bottles*

36. As regards the non-retail sales of LPG conditioned in bottles in Norway Statoil's market share is [25-35]% and [35-45]% in LPG for domestic use. There are two strong competitors present in this market. AGA appears to be a market leader in 2003 on the overall bottled LPG market, but on the bottled LPG for domestic use segment AGA ([35-45]%) closely follows Statoil. Yara Industrial reaches a market share ranging between [20-30]-[20-30]% depending on the segment. If sales of LPG in bulk are included in the same product market, the market shares would not vary substantially in Norway, in Sweden, Statoil's market share would be around [35-45]%<sup>9</sup>, its largest competitors being Fortum ([20-30]% market share), Shell ([10-20]% market share) and Sydkraft ([10-20]% market share) and in Denmark around [5-15]%.  
37. As regards the retail sales of LPG conditioned in bottles for domestic use in Norway, the estimated market share of SDS reaches [30-40]% in 2003 and in Sweden it could range between [5-15]% and [10-20]%.  
38. There are number of strong competitors in these markets. The investigation performed by the Commission indicated that notified concentration will have no significant impact on these markets.  
39. The concentration will not lead to any affected market in Denmark in this sector.

## CONCLUSION

40. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004 and article 57 of the EEA agreement.

For the Commission  
Mario MONTI  
Member of the Commission

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<sup>8</sup> Sweden OKK8 [25-35]%, Shell [10-20]% and Preem [10-20]%, Norway Hydro Texaco [25-35]%, Esso [35-45]% and Shell [20-30]%, Denmark : Shell [20-30]%, Hydro-Texaco [15-25]% and Q8 [15-25]%.  
<sup>9</sup> Statoil does not sell LPG conditioned in bottles in Sweden, it only sells in bulk.