EN

Case No COMP/M.6477 - BP/ CHEVRON/ ENI/ SONANGOL/ TOTAL/ JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 16/05/2012

In electronic form on the EUR-Lex website under document number 32012M6477

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 16/05/2012
C(2012) 3325

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

Subject: **Case No COMP/M.6477 – BP/ Chevron/ Eni/ Sonangol/ Total/ JV Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004**[1]

1. On 4 April 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which BP plc ("BP", U.K.), Chevron Global Energy Inc. ("Chevron", U.S.A.), Eni SpA ("Eni", Italy), Sociedade Nacional de Combustíveis de Angola, Empresa Pública ("Sonangol", Angola) and Total SA ("Total", France) (together "the Parents") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over a full-function joint venture, Angola LNG ("JV", Angola) (together with the Parents, the "Parties"), by way of a change in the activities of the JV ("the Proposed Transaction")[2].

I. THE PARTIES

2. BP is a global energy company, active in the exploration, development and production of oil and gas, in the refining, manufacturing and marketing of oil products as fuel for transportation, energy for heat and light, and petrochemicals, and in the development of renewable energies.

3. Chevron is a wholly-owned subsidiary of Chevron Corporation, an integrated energy company with subsidiaries that conduct business worldwide. The Chevron Group is active in many areas of the energy industry, including in the exploration, production and transport of oil and gas, the refining, marketing and distribution of transportation fuels and lubricants,

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 Publication in the Official Journal of the European Union No C 110, *17.04.2012* , p.8

the manufacture and sale of petrochemical products, the generation of power and production of geothermal energy.

4. Eni is the parent company of the Eni Group, an integrated energy group active in Italy and worldwide in the activities of finding, producing, transporting, transforming and marketing oil and gas, electricity generation, petrochemicals, oilfield services, construction and engineering industries.

5. Sonangol is an Angolan state-owned energy group. Sonangol is the sole concessionaire for the exploration of oil and gas on the subsoil and continental shelf of Angola. It is active in the exploration, production, manufacturing, transportation and marketing of hydrocarbons in Angola, and in the supply of oil internationally.

6. Total is active in many fields of the energy sector, including the upstream field (oil and gas exploration, development and production of oil and gas, including liquefied natural gas), the downstream field (refining, marketing, trading and shipping of crude oil and petroleum products), base chemicals (petrochemicals and fertilizers), specialty chemicals, coal mining and power generation.

7. The JV has built Liquefied natural gas ("LNG") liquefaction facilities at Soyo on the coast of Angola and will be active in the production of LNG based on gas supplied from off-shore exploration blocks in Angola and the supply of this LNG on an international basis.

II. THE OPERATION AND THE CONCENTRATION

8. In 2002, the Parents created the JV, which is intended to be active in the production of LNG based on gas supplied from off-shore exploration blocks in Angola. It was originally intended that the LNG would be re-gasified in the USA and be sold only to affiliates of the Parents in proportion to their equity shareholdings for re-sale in the USA. The Parents have recently decided to extend the activities of the JV to also include the marketing of LNG to third parties, such that the JV will in the future act as a full-function entity on the market.

9. The Proposed Transaction is a concentration within the meaning of Article 3(4) of the Merger Regulation on the basis of a change in activities of an existing joint venture. Specifically, whereas previously the JV could only supply its Parents, it will now be active on the market as a full-function joint venture through a redirection entity (Angola LNG Marketing Ltd) providing market services to the JV.

10. The JV is jointly controlled by all five Parents. At shareholder level, all strategic commercial decisions affecting the JV require the affirmative vote of […] shares eligible to vote – i.e. each of the Parents has a veto right.[3] At Board level, each of the Parents is entitled to appoint one member to the board of ALNG Ltd (the main operative entity of the JV) and the affirmative vote of […] votes eligible must be cast for matters which affect […] – i.e. each of the members has a veto on matters dealing with strategic commercial activities of the JV.[4]

[3] […].

[4] […].

11. The JV will be fully functional in nature: (i) it owns or has access to all assets required for the production and transportation of LNG to re-gasification plants globally; (ii) it has the ability to retain profits from its operations to finance its activities; (iii) it will receive and liquefy the surplus gas that is made available to Sonangol in accordance with the oil exploration licences granted by the Angolan Government and, by liquefying the surplus gas, the JV adds considerable value to the gas enabling the surplus gas to be marketed worldwide as LNG; (iv) any LNG sales by the JV to its Parents will be carried out at arm’s length[5]; (v) no volumes of LNG will be reserved for the Parents, all LNG cargoes will be competitively tendered or bilaterally negotiated on an arm's-length basis and, like other market players, affiliates of the Parents will be able to purchase these cargoes only if they win the tender or the contract; (vi) the JV will have its own dedicated management and personnel, although the board members of ALNG Ltd are employed by respective shareholders but will owe fiduciary duties to the JV. The JV also employs its own staff to carry out liquefaction and other activities, while certain functions will be carried on by personnel seconded by the Parents during a start-up period; (vii) the JV has no envisaged end date and it is anticipated that it will be active on a long-term basis.

12. Consequently, the Proposed Transaction consists in an operation of concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

13. The undertakings concerned have a combined aggregate world-wide turnover in 2010 of more than EUR 5 000 million[6] (BP: EUR 269 768 million; Chevron: EUR 149 505 million; Eni: EUR 98 523 million; Sonangol: EUR 16 696 million; Total: EUR 159 269 million; JV: EUR 0 million). Each of them has an EU-wide turnover in 2010 in excess of EUR 250 million (BP: EUR […] million; Chevron: EUR […] million; Eni: EUR […] million; Sonangol: EUR […] million; Total: EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

14. The JV concerns the production of LNG in Angola and the supply of LNG to (inter alia) the EU. The JV is active in the production of LNG from natural gas associated with four oil exploration blocks off the coast of Angola. Exploration and production activities in the relevant blocks are carried out by BP, Eni, Total and Chevron (together with other third parties). The natural gas (which is a by-product of oil production) is transported along

5 The Parents originally envisaged that all LNG would be disposed of by the JV in the following way: the JV would (i) liquefy the natural gas in Soyo, Angola; (ii) transport the LNG to the USA; (iii) re-gasify the LNG at a terminal in the Gulf Coast; (iv) transport the re-gasified LNG through pipelines in the US to the delivery point; and (v) sell the natural gas to affiliates of the Parents in the USA in proportion to the equity holdings in the JV. These activities are referred to as the "Base Trade". Following the Proposed Transaction, Base Trade transactions will remain available to the Parties, should the JV be unable to commercialise a particular cargo at an attractive price. However, the Parties view Base Trade transactions as a fallback and therefore expect that they will be exceptional as they will occur only when a more favourable market buyer does not exist for a cargo.

6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

pipelines which have been constructed by those parties carrying out oil exploration activities in the blocks. The natural gas will be liquefied at the JV's liquefaction plant in Soyo, Angola. The JV will then transport the LNG in LNG tankers to customers for re-gasification.

V. Relevant product and geographic markets

15. According to the Commission's decision-making practice[7], the following activities constitute separate product markets: (i) exploration/production of oil and natural gas; (ii) gas wholesale supplies, including a separate market for LNG and the necessary gas import infrastructures, (iii) gas transmission (via high pressure systems), (iv) gas distribution (via low pressure systems), (v) gas storage, (vi) gas trading, (vi) gas (retail) supply, comprising several separate markets.

16. LNG is natural gas that has been cooled to approximately -162° Celsius for shipment and/or storage in liquid form. The life-cycle of LNG comprises 4 to 5 stages: (i) extraction of natural gas; (ii) delivery of the natural gas through a pipeline to the shore if extracted off-shore; (iii) conversion of the natural gas to liquid form in a liquefaction plant; (iv) transport in specially-designed LNG tankers; and (v) delivery for re-gasification at a receiving terminal at the destination country.

17. As regards LNG in particular, the Commission has assessed the relevant product market for LNG (wholesale) supply in a number of previous cases.[8] Generally from the perspective of gas buyers there is no distinction between gas which is transported by pipeline and gas which is transported as LNG and re-gasified. In *Statoil / Hydro*, the Commission considered whether the supply of LNG should be distinguished from supplies of piped natural gas as LNG exports/imports require specific infrastructures which are not present in all gas exporter/importer countries, but this question was left open.[9] The necessary import infrastructures consist of re-gasification terminals, underground gas storage facilities and international pipelines.

18. Similarly, the Commission indicated previously that the geographic market for LNG most likely comprises the EEA, plus Russian and Algerian imports, but also left open the question of geographic market definition.[10] In assessing the geographic scope of the market in *Statoil / Hydro*, the Commission underlined that there is a limitation in the access to alternative sources of supply, depending on pipeline connections and available import capacities, including import infrastructures for LNG. The Commission found that, in countries where import infrastructures for LNG are present, LNG would constitute a direct competitive constraint to gas imported via pipelines.[11] There are

---

[7] COMP/M.3440 *EDP/GDP/ENI*, 9 December 2004; COMP/M.3696 *E.ON/MOL*, 12 December 2005; COMP/M.3886 *Dong/Elsam/Energi E2*, 15 March 2006; COMP/M.4180 *Gaz de France /Suez*, 14 November 2006, COMP/M.5892 *Enagas / Murphy Oil / Almacenamiento La Gaviota*, 8 October 2010.

[8] Case No COMP/M.4545 - *Statoil / Hydro* 3 May 2007; Case No COMP/M.5520 – *Eni / Distrigaz* 15 October 2008; Case No COMP/M.5585 – *Centrica / Venture Production* 21 August 2009.

[9] Case No COMP/M.4545 - *Statoil / Hydro*, para 11-12.

[10] Case No COMP/M.5520 – *Eni / Distrigaz*, para 35-36.

[11] Case No COMP/M.4545 - *Statoil / Hydro*, para 14.

currently re-gasification terminals in the following 9 EEA countries: the United Kingdom; France; Belgium; Spain; Portugal; Greece; Italy; the Netherlands; and Sweden, which does not receive third party LNG supplies. However, the Commission ultimately left the geographic scope of the relevant market open in that case.

19. Nevertheless, for the purpose of the current decision, there is no need to conclude on the relevant product and geographic market definitions for LNG as the Proposed Transaction does not give rise to competition concerns under any alternative market definition.

V.1. Competitive assessment

20. The Proposed Transaction gives rise to one horizontally affected market regarding the (wholesale) supply of LNG, which has to be assessed in relation to access to import infrastructures, in particular access to re-gasification terminals.

Overall Market Structure

21. From 2013, the Parties expect that the JV will produce up to [70-80] LNG cargoes per annum, which is the maximum capacity of the Soyo liquefaction plant. This is equivalent to [5-10] bcm of natural gas. Given the geographical location of Angola, the Parents submit that the JV will be able to supply Asia, Latin America and Europe and will select customers in these regions based on maximising commercial returns. According to current estimates of the Parties, it is expected that up to approximately [40-50]% of the JV's available cargoes may be sold in Europe annually – equivalent to approximately [0-5] bcm – with the remainder sold world-wide. This anticipated European volume ([0-5] bcm) will represent a small fraction ([0-5]%) of the total volume of LNG that it is expected to be supplied in Europe in 2013 (83.7 bcm). Should the JV sell all the available cargoes in Europe, i.e. [5-10] bcm, its share of the LNG supply in Europe would remain small ([5-10]%). These numbers become almost negligible should one look at a potential market comprising LNG and piped natural gas (estimated at 500 bcm for 2013), where the JV would supply [0-5]% of the demand according to the Parties' current estimates, and maximum [0-5]% if all its cargoes are directed to Europe.

22. In the countries mentioned in paragraph 18, where import infrastructures for LNG are present, LNG competes with piped natural gas. In the table below, the Parties estimated the JV’s market shares in 2013 in respect of a potential market comprising LNG and piped natural gas on the basis of an equal split of the JV’s expected LNG volumes in each relevant country where LNG import facilities and re-gasification terminals are in place (i.e. the UK, France, Belgium, Spain, Portugal, Greece, Italy and the Netherlands).

Table 1: Estimated shares of the JV for LNG + piped natural gas supply in 2013

Region / Member State	Total gas consumed (bcm)	Estimated volume to be supplied by JV based on [40-50]% of the cargoes (bcm)	Estimated share of supply of JV	Estimated volume to be supplied by JV based all cargoes (bcm)	Estimated share of supply of JV
EEA	**500.00**	**[0-5]**	**[0-5]%**	[5-10]	**[0-5]%**
UK	86.90	[0-5]	[0-5]%	[0-5]	[0-5]%
France	48.30	[0-5]	[0-5]%	[0-5]	[0-5]%
Belgium	18.20	[0-5]	[0-5]%	[0-5]	[0-5]%
Spain	33.40	[0-5]	[0-5]%	[0-5]	[0-5]%
Portugal	5.70	[0-5]	[5-10]%	[0-5]	[10-20]%
Greece	4.90	[0-5]	[5-10]%	[0-5]	[10-20]%
Italy	71.30	[0-5]	[0-5]%	[0-5]	[0-5]%
Netherlands	41.60	[0-5]	[0-5]%	[0-5]	[0-5]%

Source: 2013 market estimates from PFC Energy (February 2012).

23. Even if one was to look at national markets for LNG only, the increment potentially brought by the JV is minimal and, in Portugal and Greece, the demand for LNG is currently low (below 4 bcm), so the estimated share of the JV in these countries is likely overestimated. Each of the JV's Parents, apart from Sonangol, already supplies LNG and piped natural gas to each of the above countries, each in different national markets with limited overlap (Total in France and UK; BP in the Netherlands and Italy; Eni in the other countries; Chevron with negligible presence in the UK and the Netherlands for piped natural gas only). The Parents have very different market positions throughout the EEA and thus they have no incentive to align their commercial strategies to favour one or the other in either country.

24. In any event, the terms of any coordination between the Parents could easily be defeated by the Parties' numerous competitors who account for the larger portion of the market in all relevant Member States. Indeed, several strong (vertically integrated) competitors exist in the EEA, and in each of the above countries, and will continue to constrain the JV and its Parents on the market for wholesale supply of LNG, notably **Qatar Petroleum** ([30-40]% in the EEA, [60-70]% in UK, [10-20]% in France, [60-70]% in Italy, [0-5]% in Greece, [40-50]% in Belgium), **Sonatrach** ([10-20]% in the EEA, [30-40]% in France, [5-10]% in Spain, [5-10]% in UK, [40-50]% in Greece), **ExxonMobil** ([10-20]% in the EEA), **NLNG** ([20-30]% in France, [20-30]% in Spain, [50-60]% in Portugal), **GDF** ([10-20]% in France, [10-20]% in Italy) and **Shell** ([5-10]% in the EEA). Looking at LNG and piped natural gas together, competitors such as **Gazprom** ([20-30]% in the EEA, [50-60]% in Greece), **Gas Terra** ([10-20]% in the EEA, [70-80]% in the Netherlands), **Statoil** ([10-20]% in the EEA, [10-20]% in UK), **Sonatrach** ([10-20]% in Greece, [30-40]% in Portugal) and **GDF** ([60-70]% in France, [10-20]% in Belgium) also constrain the activities of the JV and its Parents.[12]

Access to Import Infrastructures

25. Furthermore, the Commission has previously assessed the impact of concentrations in the gas sector in relation to access to import infrastructure. In particular, the

12 The national market shares are based on sales of LNG and natural gas allocated by country of first destination into which each company supplied the LNG or natural gas.

Commission has referred to either *capacity rights in* or *ownership of* these gas infrastructures when considering the competitive effects of transactions in the gas sector.[13] As described in paragraph 18, there are currently 8 countries in the EEA with re-gasification terminals accessible to third parties.

26. EU legislation guarantees third party access to gas import infrastructures. In relation to re-gasification and transmission, Article 32 of Directive 2009/73[14] requires, among others, the implementation of a system of third party access to the transmission system and LNG facilities (including re-gasification terminals) in each Member State. Access must be granted in accordance with a system which is applied objectively and without discrimination between system users. Similarly, in relation to storage, Article 33 of the Gas Directive provides that the procedures that Member States may choose for the organisation of access to storage facilities (whether negotiated or regulated access) must operate in accordance with objective, transparent and non-discriminatory criteria.

27. None of the Parties has a controlling interest in any re-gasification terminal in the EEA. The table below provides an overview of the Parties' capacity rights in re-gasification terminals in the EEA.

Table 2: Parties' capacity rights in re-gasification terminals in the EEA

Country	Re-gas capacity (Bcm per annum)	BP		Chevron		Eni		Sonangol		Total	
		bcm	%	bcm	%	bcm	%	bcm	%	bcm	%
UK	51.10	[0-5]	**[0-5]%**	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	**[0-5]%**
France	23.75	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	**[0-5]%**	[0-5]	[0-5]%	[0-5]	**[5-10]%**
Belgium	9.00	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	**[30-40]%**	[0-5]	[0-5]%	[0-5]	[0-5]%
Spain	60.1	[0-5]	**[0-5]%**	[0-5]	[0-5]%	[0-5]	**[5-10]%**	[0-5]	[0-5]%	[0-5]	[0-5]%
Portugal	6.50	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	**[20-30]%**	[0-5]	[0-5]%	[0-5]	[0-5]%
Greece	5.30	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%
Italy	10.96	[0-5]	**[5-10]%**	[0-5]	[0-5]%	[0-5]	**[5-10]%**	[0-5]	[0-5]%	[0-5]	[0-5]%
Netherlands	12.00	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%	[0-5]	[0-5]%

Source: Parties' own information.

28. Even though Eni in particular currently holds significant capacity rights in re-gasification terminals in Belgium and Portugal, it will not be able to foreclose third

[13] Case No COMP/M.3440 – *Eni* / *GDP* / *EDP* 9 December 2004; Case No COMP/M.3696 – *E.ON* / *MOL* 21 December 2005; Case No COMP/M.3868 – *Dong* / *Elsam* / *Energi E2* 14 March 2006; Case COMP/M.4180 – *Gaz de France* / *Suez* 14 November 2006; Case COMP/M.5743 – *Enagas / BBG* 3 February 2010; Case COMP/M.5892 – *Enagas / Murphy / Almacenamiento la Gaviota* 6 October 2010.

[14] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (the "Gas Directive").

parties to access these re-gasification terminals due to the EU legal framework in place which guarantees third party access to gas import infrastructures, including re-gasification terminals. Moreover, the Parents emphasize that the capacity rights and ownerships of the Parents will not be combined or otherwise affected by the Proposed Transaction. The Parents will continue to have an incentive to compete in respect of LNG and piped natural gas sales in Europe. Accordingly, the expansion of activities of the JV does not lead to any change as regards competitors' ability to access gas import infrastructure.

29. In addition, there is no direct vertical link between the activities of the JV and the interests of the Parents as regards gas import infrastructure. When the JV redirects LNG cargoes, it will be the buyers of the LNG in the EEA who will require re-gasification/storage services and who will accordingly enter into customer-supplier relationships with re-gasification service providers. This is because the JV will be active in selling LNG (and not active in selling natural gas). Accordingly, it would be impossible for the Parents to afford any kind of priority access to gas import infrastructure in respect of the LNG sales of the JV. No potential customer-supplier relationship can be envisaged in respect of access to international pipelines.

Lack of Transparency

30. As regards the structure of the JV itself, it will also not facilitate coordination of the Parents' activities since the JV agreements include mechanisms to ensure that the Parents do not obtain competitively sensitive information in respect of the JV's activities. In particular, these mechanisms will prevent the flow of competitively sensitive information from the Parents to the JV and from the JV to the Parents to that which is necessary for the Parents to manage their interests in the JV. Such information expressly excludes, inter alia, commercially sensitive information such as the JV's customer and/or pricing information.

31. The Parties also note that the market for the supply of LNG and piped natural gas sales is not transparent. The market is characterised by a large number of suppliers and customers and contracts are variously concluded on a spot, short-term, or long-term basis. Contracts (in particular pricing terms) are negotiated on a bi-lateral confidential basis. The Parties' arguments are consistent with the findings of the Commission in previous cases in the sector in which the risk of coordinated effects was assessed. In *Statoil/Hydro*, the Commission excluded the possibility of coordinated effects because the upstream supplier base for LNG for supplies into the EEA was wide, most gas volumes were sold via long term contracts with prices negotiated individually, and most incumbent buyers had a portfolio of seven or more counterparties. Accordingly, the Commission concluded: "*It therefore seems difficult to conclude prima facie that the market is transparent enough as to facilitate tacit coordination among gas producers. Additionally, it appears that the incentives of the national producers can be significantly different*."[15]

Pro-competitiveness of the JV

32. The JV was initially intended to sell only to affiliates of the Parents in proportion to their equity shareholdings for re-sale in the USA. The rationale for the change in scope of the JV

15 Case No COMP/M.4545 - *Statoil / Hydro* 3 May 2007, para 51-52.

is to meet increasing LNG demand in Europe (and elsewhere). Thus, the Proposed Transaction is expected to lead to increased supply of LNG to Europe, at a time when demand for gas is increasing significantly and there is a need to diversify gas importation by increasing LNG imports. The Proposed Transaction is expected to contribute to meeting increased demand for gas in the EU and deliver a new, independent source of LNG for the EU customers, which is overall a pro-competitive outcome.

Conclusion

33. It follows that no competition concerns arise from the Proposed Transaction with regard to horizontal overlap with respect to the market for (wholesale) supply of LNG in the EEA or in any of the relevant countries.

VI. CONCLUSION

34. For the above reasons, the European Commission has decided not to oppose the Proposed Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President