EN

Case No COMP/M.4545 - STATOIL / HYDRO

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03-05-2007

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PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.4545 – Statoil/ Hydro
Notification of 23 March 2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 23 March 2007**,** the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Statoil ASA ("Statoil", Norway) merges with the petroleum business (referred to as "Hydro") of Norsk Hydro ASA ("Hydro Group", Norway).

I. THE PARTIES AND THE OPERATION

2. Statoil is an integrated oil and gas company active in exploration and production of natural gas and crude oil (mainly in Norway), refining of crude oil and retail and non-retail sales of fuels and other oil derivatives. It is controlled by the Norwegian State (Ministry of Petroleum and Energy) which holds 70.9% of Statoil's ordinary shares. In addition, Statoil markets and sells the oil and gas produced by Petoro AS ("Petoro"), a company owned by the Norwegian State[2].

3. Hydro is active in the same areas as Statoil, with the exception of refining, an activity that Hydro has exited. In addition, Hydro has some wind energy activities and an interest in a joint venture[3] planning to construct and operate gas-fired power plants. The

1 OJ L 24, 29.1.2004 p. 1.

2 The Norwegian State is, through the state-owned company Petoro AS, the beneficial owner of the licence interest of the Norwegian State.

3 The joint venture is Naturkraft AS and the partners are Hydro 50% and Statkraft SF 50%.

Norwegian State (Ministry of Trade and Industry) holds 43.82% of the shares in Norsk Hydro Group, but neither the Norwegian State nor any other undertaking or person has control over the company.

4. The proposed transaction consists of the merger between Statoil and Hydro and therefore represents a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. After the transaction, the Norwegian State will ultimately hold 62.5% of the merged company's shares.

II. COMMUNITY DIMENSION

5. The parties have a combined worldwide turnover of more than EUR 5 billion (EUR 52.8 billion for Statoil, EUR 12.6 billion for Hydro). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million (EUR […] for Statoil, EUR […] for Hydro). Neither Statoil nor Hydro achieves more than two-thirds of its aggregate EC-wide turnover within one and the same Member State. The concentration therefore has a Community dimension and the Commission has sole competence to take a decision by virtue of Article 57(2)(a) of the EEA Agreement.

III. RELEVANT MARKETS

6. Both parties are present in most of the markets throughout the natural gas and oil value chains, including exploration, supply, transport and storage of gas and crude oil (upstream markets) as well as trading of gas and retail and non-retail supply of gas and finished oil products (downstream markets). Statoil is, in addition, active in the refining of crude oil into finished oil products, where Hydro is not active.

A. Exploration of oil and natural gas

7. In previous decisions[4] the Commission has considered the exploration of oil and natural gas as a single relevant product market, the geographic market being defined as world-wide.

8. Further downstream, the Commission has defined the following relevant markets in which the parties' activities overlap:

B. Gas markets

B.1. Development, production and wholesale of gas

9. This market has been examined by the Commission in a number of decisions in which it has consistently concluded that there is one market for the upstream supply of gas (comprising also the development and production of gas) to customers in the EEA: i.e. gas produced at the gas fields and sold to customers (normally the national incumbents) in the EEA. The Commission has also concluded that this market most likely comprises

4 See inter *alia* decisions in Cases No M.3052 – Eni/Fortum and No M.3294 - Shell / BEB

the EEA, plus Russian and Algerian gas imports[5], but has left open the geographic market definition. The parties agree with this market definition but believe that the development of the liquefied natural gas ("LNG") infrastructure, which allows imports of gas from other sources such as Qatar, Egypt, Trinidad & Tobago or Nigeria, as well as a pipeline from Libya to Italy means that these other sources of gas supplies should be included in the scope of the market.

10. With respect to the product market definition, a further distinction could be made between high calorific value gas ("HCV gas") and low calorific value gas ("LCV gas"). Indeed, as to the downstream markets for gas supply to end-customers, the Commission has already recognised this distinction in a number of decisions due to the fact that HCV gas and LCV gas are not always substitutable to each other. The parties do not share this view since they consider that gas suppliers can readily convert HCV gas to LCV gas and vice versa. However, in the recent decision *Gaz de France/Suez*, the Commission found that HCV gas and LCV gas do not belong to the same product market in Belgium and in France[6].

11. In addition, another possible consideration is whether LNG supplies should be distinguished from supplies of piped natural gas. Indeed, although the parties believe that LNG supplies are substitutable and compete directly with piped natural gas, LNG exports/imports require specific infrastructures which are not present in all gas exporter/importer countries. Currently, no more than seven Member States have functioning LNG import facilities. Moreover, even though liquefaction and transport costs for LNG have significantly fallen over the recent past years, LNG is competitive with gas transported by pipeline only under certain conditions of pipeline distances[7].

12. Nonetheless, for the purposes of this decision[8], the question whether natural gas as whole should be considered as the relevant product market or whether a distinction between HCV gas, LCV gas and LNG should be made can be left open as the final assessment is not affected regardless of the definition adopted.

13. With respect to the geographic market definition, all the respondents to the market investigation carried out in this case have, on one hand, confirmed that relevant sources of natural gas for delivery into the EEA should include also at least Russian and Algerian gas. Indeed, Russian and Algerian gas imports represent together about 40% of the EEA gas consumption (Russia: 30%, Algeria: 11%).

14. On the other hand, several respondents have pointed out that Norwegian gas, as it is the case for Russian or Algerian gas, cannot be sold in some EEA countries for technical

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5 M.1573, Norsk Hydro / Saga, para. 15; cf also M.1383, Exxon / Mobil, para. 18; M.3086, Gaz de France / Preussag Energie, para. 10; M.2208, Chevron / Texaco, para. 8; M.2681, Conoco Inc. / Phillips Petroleum, para. 10; M.3288, TNK-BP / Sibneft / Slavneft JV, para. 9; and M.3052, ENI / Fortum Gas, see para. 14.

6 M 4180 Gaz de France / Suez, § 64-69 and § 344-345.

7 Energy sector inquiry, § 899-901.

8 This is with the exception of the arguments developed in section "A.4. Development, production and wholesale of gas" below and for the reasons explained in it with respect to those countries in which LNG imports are a feasible alternative.

reasons (e.g. absence of pipeline connection or lack of available import capacity), although it has been indicated that sales in countries with no direct pipeline connection could also be made via swaps. This limitation in the access to alternative sources of supply also applies, as explained above, to countries lacking in import infrastructures for LNG, for which LNG would not constitute a direct competitive constraint to gas imported via pipelines.

15. Taking into account these limitations, it is relatively clear that Norwegian gas does not exert the same level of competitive pressure throughout the EEA territory or even in the various countries, taken as a whole or individually, where Norwegian gas is sold either directly via pipelines from the Norwegian Continental Shelf ("NCS") or via swaps.

16. However, for the purposes of this decision it is not necessary to decide whether the appropriate relevant geographic area to be considered for assessing this transaction is (i) the EEA, (ii) an area comprising those EEA countries in which gas from the NCS is sold (directly by pipelines or via swaps) or (iii) each individual country in which the parties sell gas. Regardless of the geographic definition considered, the concentration would not give rise to competitive concerns in this market.

B.2. Other gas markets

17. The Commission has in the past considered the following additional relevant product markets in the gas industry:

(i) transport: for which the Commission distinguished between the Northern and the Southern North Sea[9] but did not take a final view.

(ii) processing: for which the Commission distinguished between the Northern and the Southern North Sea[10],

(iii) transmission via high-pressure pipeline grids, defined as a national market in case there is an integrated national pipeline system[11]. Otherwise, this market may be sub-national in that each pipeline (or sub-pipeline system) may constitute the relevant geographic market[12],

(iv) distribution, defined as sub-national[13] and each distribution system constituting a separate market,

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9 Case M.1532 – BP Amoco / Arco (where the Northern and the Southern North Sea were considered separate markets), and Case No M.1573 – Norsk Hydro / Saga (where the distinction between the Northern and the Southern North Sea was left open).

10 Case M.1532 – BP Amoco / Arco.

11 Decision of 21/12/2005 in Case No M.3696 – E.ON /Mol

12 Decision of 8/10/2004 in Case M.3410 – Total/Gaz de France and decision of 14/11/2006 in case M.4180 – Gaz de France/Suez.

13 Decision of 21/12/2005 in Case No M.3696 – E.ON /Mol

(v) storage, defined as national, whereas also wider[14] or narrower (see for example case M.1383 - Exxon/Mobil for Germany) market definitions have been considered, and

(vi) downstream supply of gas, segmented into the following relevant markets: traders, power generators, large industrial customers, small industrial and commercial customers as well as residential customers, all of them defined as national markets[15] except the supply for residential customers which has been considered as sub-national or as national, depending on the degree of liberalisation[16].

18. For the purposes of this decision, it is not necessary to take a final view on the various possible product and geographic market definitions indicated above since the final assessment of the case does not change regardless of the definition adopted.

C. Oil markets

C.1. Non-retail supply of diesel and light heating oil

Relevant product markets

19. Fuels are delivered in bulk (normally by truck) to final customers' own storage facilities. The parties submit that given the different types of fuels supplied for different uses to different customers, and the different taxation, prices and technical specifications, all non-retail fuels cannot be regarded as the same relevant product market. Therefore, the parties submit that a distinction should be made between (i) the non-retail supply of diesel, typically provided to large transportation companies to be used as motor fuel and (ii) the non-retail supply of light heating oil, typically used for heating purposes for companies or domestic households.

20. This view is in line with previous Commission's decisions[17] where separate product markets have been defined for each type of fuel (such as diesel, gasoline or light heating oil).

21. Therefore, for the purposes of this decision, non-retail supply of diesel and non-retail supply of light heating oil are considered to be two separate relevant product markets.

Relevant geographic market

22. In previous decisions the Commission has found the markets for non retail supply of diesel and non retail supply of light heating oil to be at least national. In previous cases, the Commission has also considered the possibility of defining local markets for the supply of non-retail refined products. The Commission has previously held that the catchments area for a source of supply is somewhere between 100-150 km[18]. More

14 Decision of 21/12/2005 in Case No M.3696 – E.ON /Mol

15 With the recent exception of France, in case M.4180 – Gaz de France/Suez, where sub-national markets where considered.

16 Cases No M.3696 – E.ON /Mol and M.4180 – Gaz de France/Suez.

17 Decision in Case COMP/M.4532 – Lukoil / ConocoPhillips, of 21 February 2007.

18 Case COMP M. 1383 Exxon /Mobbil.

recently, the Commission has considered these markets to be at least Scandinavian-wide[19] or even wider[20]. However, the parties consider that the geographic markets should be considered as national. The market investigation has confirmed that the geographic market is at least Sweden, with no indications that it could be a sub-national market.

23. For the purposes of this case, the question whether the relevant geographic market is regional (Scandinavia) or national (Sweden) can be left open as it will not affect the final outcome.

C.2. Retail sale of fuels

Relevant product market

24. Motor fuels are gasoline, diesel, biofuels (biodiesel and ethanol) and LPG[21], which are generally sold to motorists in petrol stations. Gasoline and diesel account for most of the sales; for example, in Sweden, the only country affected by the transaction with respect to this product market, biofuels account for only about 1% of the motor fuels supplied to motorists and LPG sales are also insignificant.

25. The parties consider that the retail supply of motor fuel constitutes a single relevant product market, which has been also the Commission approach in other cases[22]. However, more recently[23] the Commission has considered a further sub-division of the retail supply of motor fuels into sales through motorway and sales through non-motorway stations. The Commission has also considered in the recent past[24] the possibility suggested by other parties of further distinguishing between (i) standard stations, (ii) rural stations, (iii) diesel truck stations (stations dedicated to diesel supply with high speed pumps for trucks and busses) and (iv) marine stations, although it has left the final definition in this respect open.

26. The parties consider that in the present case the distinction between motorway/non-motorway stations is not appropriate because in Sweden, where the transaction will have its greatest impact, the motorway market does not exist mainly because of motorway stations being virtually absent (only 10 stations in the whole Sweden can be accessed only from motorways). Therefore, most stations are equally accessible from motorway and non-motorway traffic, price differences are very small and moreover there are no specific motorway tolls. All the respondents have supported the parties' view stressing moreover that there are no tolls on Swedish motorways and therefore motorists have the choice to use nearby near stations along Swedish motorways.

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19 Decision in Case COMP/M.3291 – Preen / Skandinaviska Raffinaderi.

20 Decision in Case COMP/M.4532 – Lukoil / ConocoPhillips, of 21 February 2007.

21 LPG: Liquified Petroleum Gases (comprising propane and butane).

22 Case COMP/M.727, BP/Mobil; Case COMP/M.383 Exxon/Mobil.

23 Case COMP/M.1628, TotalFina/Elf.

24 Decision in Case COMP/M.4532 – Lukoil / ConocoPhillips, of 21 February 2007.

27. For the purposes of the present decision, motorway and non-motorway stations in Sweden belong to the same relevant product market. With respect to the other types of fuel stations in Sweden, the question whether they have to be split into the various markets described above can be left open as the final assessment of the case is the same regardless of the definition adopted.

Relevant geographic market

28. The parties consider that the retail supply of motor fuels is national, which is in line with previous Commission's decisions[25].

C.3. Other oil markets

29. Besides the relevant markets described above, the Commission has in the past considered the following additional relevant product markets in the oil industry:

(i) development, production and sale of oil, defined as a world-wide market[26],

(ii) transport via pipeline in the Northern North Sea and in the Southern North sea[27],

(iii) storage of petroleum products, for which it has been left open whether the market is national or sub-national[28],

(iv) lubricants, split into industrial, automotive, marine and aviation lubricants and defined as likely to be EEA-wide for the first three markets and world-wide for the fourth one[29],

(v) development, production and sale of Natural Gas Liquids ("NGL"), which comprise LPG (butane and propane), naphtha, ethane and condensate. The Commission has previously defined NGL as a single relevant product market with a geographic dimension of at least the EEA[30]. In the present case, however, the market investigation has not fully supported this view. The results show that these products are not always easily substitutable and that, in particular as regards ethane, the geographic scope can be narrower than the EEA, possibly being regional or, according to some respondents, even national. In any event, for the purposes of this decision both the product and the geographic market definitions can be left open since under the narrowest product and geographic market definition, the final assessment is the same.

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25 Decision in Case COMP/M.4532 – Lukoil / ConocoPhillips, of 21 February 2007.

26 Decision of 5/7/99 in Case No M.1573 – Norsk Hydro / Saga

27 Decision of 5/7/99 in Case No M.1573 – Norsk Hydro / Saga

28 Case M.1621 – Pakhoed / Van Ommeren.

29 Case M.1891 – BP Amoco/Castrol and Case M.2208 Chevron/Texaco.

30 Decision of 5/7/99 in Case No M.1573 – Norsk Hydro / Saga

(vi) non-retail sale of liquefied petroleum gases ("LPG"), which could be split into LPG sold in bottles and LPG sold in bulk, defined as national[31],

(vii) non-retail sale of gasoline, defined as a national market[32], although more recently Scandinavia has been considered as the relevant geographic market for the non-retail sale of the various final products (gasoline, diesel and light heating oil)[33],

(viii) base oils and additives.

(ix) aviation fuel.

IV. COMPETITIVE ASSESSMENT

A. Gas markets

A.1. Transport and processing

30. With respect to gas transport and processing infrastructures of the NCS, the vast majority of them are owned by Gassled, a joint venture in which Petoro, Statoil, Hydro and other major petroleum companies have interests (Petoro: 38.42%; Statoil: 20.18%; Hydro: 11.62%). However, these infrastructures are operated and managed by Gassco (including capacity management and third party access), an independent state-owned operator. Gas infrastructures are subject to an access regime under which capacity is allocated on a non-discriminatory basis and based on the needs of producers of gas on the NCS for gas transport, in accordance with regulations prescribed by the Norwegian government. With respect to the possible influence that the new entity may have on Gassled's decision-making process (for example, for limiting expansion of capacity), it has to be taken into account that, despite its increased participation in Gassled, decisions by the governing body of Gassled (the "Management Committee") can be adopted on the basis of three alternative majorities guaranteeing that no company has sole or joint control over Gassled[34]. Moreover, the agreement between the participants in Gassled provides that the voting rules have to be amended following any change to the ownership in Gassled in order to maintain the same voting structure following that change[35].

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31 Case M.1628 – TotalFina/Elf.

32 Case M.1628 – TotalFina/Elf.

33 Case M.3291 – Preem/Skandinaviska Raffinaderi.

34 A resolution of the Management Committee is adopted when one of the following three alternative majorities have been reached: (i) five members representing jointly at least 75% of the participating interests vote in favour of a proposal; or (ii) a majority of members representing more than 50% of the participating interests votes in favour of a proposal; or (iii) eight members representing at least 41% of the participating interests vote in favour of a proposal. (Source: Form CO). In none of these three cases the block controlled by the Norwegian state (Petoro, Statoil and Hydro) will have the ability to control Gassled.

35 Participants' Agreement, Section 4.5, §5.

31. It has to be noted that on one hand the Norwegian State controls Statoil and Petoro, these two companies having together a participation of about 58% in Gassled[36]. As a result of the proposed merger the Norwegian State will also control the merged entity increasing its participation in Gassled up to 70%. On the other hand, the Norwegian State controls 100% of Gassco. However, it has to be emphasised that, given the majority rules mentioned above, the merger will not give rise to a change of control in Gassled. Therefore the transaction is not likely to have any significant impact on an hypothetical conflict of interest (if any) of the Norwegian State.

32. It therefore appears that the merger is unlikely to affect any market for gas infrastructure on the NCS.

A.2. Transmission and storage

33. Regarding the markets for transmission and storage of gas, the parties are active only in Germany, where they have interests in the Netra gas pipeline (Statoil: 23.1%; Hydro: 7.7%) and in the Etzel gas storage facility (Statoil: 20.1% Hydro: 3.6%). However, even considering a very narrow geographic market definition consisting of (i) the transmission network in Northern Germany and (ii) the Etzel storage facility, the parties' combined equity rights would provide them with only a limited share of available transmission/storage capacity. Moreover, the entire transmission capacity owned by Statoil and Hydro in Netra is reserved on a long-term basis by their […] customers […] and the Etzel storage is currently undergoing a significant expansion, as a result of which the new entity's equity will be reduced. The proposed merger is therefore unlikely to give rise to competitive concerns on the German markets for transmission and storage of natural gas.

A.3. Distribution and downstream supply

34. The parties are not active in distribution of gas.

35. With respect to the downstream supply markets, the parties' activities overlap in the UK[37] (large industrial customers and power generators) and in The Netherlands (power generators). However the markets are not affected, the combined market shares being below 15%.

A.4. Development, production and wholesale of gas

36. As mentioned above, the Commission has in some previous cases assessed this market mainly at the EEA level from the demand point of view (whilst considering the EEA, Algeria and Russia as the supply side). From an economic viewpoint, it appears difficult to assume that conditions of competition are sufficiently homogeneous across this entire area for it to be considered a fully integrated market[38]. The table below shows the parties' and the main competitors' market shares at this level:

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36 The participations in Gassled are Petoro 38.245%, Statoil 20.18% and Hydro 11.62%.

37 Hydro has moreover informed the Commission that it has agreed to sell its downstream gas activities in the UK through its joint venture with Wingas (HydroWingas).

38 Energy sector inquiry, page 9 (3);§189-§250; Conclusions at page 90.

Development, Production and Wholesale of Natural Gas in the EEA – 2005 (HCV gas + LCV gas + LNG, including Algerian and Russian imports)

	Share of Supply	
	bcm	%
Statoil(*)	[…]	[5-10]%
Hydro	[…]	[0-5]%
Combined	[…]	[10-20]%
Gazprom	[…]	[30-40]%
GasTerra	[…]	[10-20]%
ExxonMobil	[…]	[10-20]%
Sonatrach	[…]	[10-20]%
Shell	[…]	[5-10]%
Total	[…]	[0-5]%
BP	[…]	[0-5]%
Others[39]	[…]	[5-10]%
TOTAL	520	100%

Source: Form Co.

(*) Norwegian State's sales of gas via Petoro (the state-owned corporation responsible for the State's Direct Financial Interes (SDFI) on behalf of the State), are included in Statoil, following and arrangement by which Statoil has historically marketed and sold the Norwegian State's oil and gas as part of its own production.

37. The parties' market shares do not change significantly when taking into account only HCV gas (neither Statoil nor Hydro sell LCV gas or LNG) since they then have a combined market share of [10-20]% (Statoil: [10-20]% Hydro: [0-5]%).

38. If instead of the EEA, only the area comprising the countries in which the parties currently sell gas is considered (fifteen EEA countries[40]), the transaction would only lead to the creation of an affected market for HCV gas, but the combined market share would be limited to [10-20]%. The overlap added by Hydro is very small (Statoil [10-20]% and Hydro [0-5]%).

39. At the level of the area comprising the four countries in which the parties have the ability to directly deliver gas, i.e. countries with landing points for Norwegian pipelines (the UK, France, Belgium and Germany), and also at the level of the narrowest possible product market definition in which the parties overlap (HCV gas), the transaction would lead to a combined share below [20-30]%, the overlap however being again quite limited (Statoil [10-20]% and Hydro [0-5]%).

40. Given the limited addition of market share from Hydro's activities, the Commission considers that it is highly unlikely that, post merger, customers would not be able to find an alternative source of supply to Hydro, not only from other gas producers from the

39 At present, the Parties do not have reliable figures for other suppliers of gas.

40 All the EEA countries with the exception of Bulgaria, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia and Sweden, as well as Cyprus, Malta and Iceland which do not have gas distribution infrastructures (Parties' reply to the Commission's Article 11 of 16 April 2007).

NCS (such as Total or ExxonMobil), but also from other alternative sources which, as it will be explained below, hold strong market positions in these countries.

41. Finally, if considered at the national level, and considering HCV gas, LCV gas and LNG, the transaction would give rise to the following affected markets: Belgium, Czech Republic, France and Germany. If only HCV gas or HCV gas + LNG are considered, also the Netherlands would be an affected market. The table below shows the parties' markets shares and the resulting combined market share post transaction:

Market shares at national level - 2006

	Statoil	**Hydro**	**Combined**	**Combined**	**Combined**
Country	**HCV**	**HCV**	**HCV**	**HCV + LNG ***	**HCV + LCV + LNG**
Belgium	[50-60]%	[5-10]%	[50-60]%	[40-50]%	[30-40]%
Czech Republic	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%
France	[30-40]%	[5-10]%	[30-40]%	[20-30]%	[20-30]%
Germany	[20-30]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%
The Netherlands	[10-20]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%

* Only Belgium and France have imports of LNG.

42. When these figures are considered, the transaction appears to have its most significant impact in Belgium, where, under the narrower product market definition, the combined market share would amount up to [50-60]%. In Belgium, HCV gas accounts for 57% of the national consumption, LCV gas would account for 28%, and LNG for the remaining 15%. The demand is concentrated with three main customers: Distrigas, which is the national incumbent ([80-90]%), Gaz de France ([10-20]%) and Wingas ([0-5]%)

43. However, despite the high share of supplies if the HCV gas market is considered, the Commission considers that negative competition effects are not likely. First, while it could be argued, and as the Commission has already concluded in some previous decisions, that HCV gas and LCV gas constitute separate relevant product markets, HCV gas and LNG are completely substitutable products. Therefore, the question whether HCV gas and LNG have to be considered as a single or as separate markets may make economic sense when wider geographic markets are considered (i.e. several countries with differences at national level in terms of LNG import infrastructure). In the case of Belgium, given that LNG is a feasible alternative, there would be no grounds for not taking into account both HCV gas and LNG. In this case, the parties combined share is around [40-50]% (Statoil [30-40]% and Hydro [5-10]%). Moreover, almost half of the sales accounted for Hydro ([…] bcm out of […] bcm[41]) are internal sales to Hydro's trading company, which in turn supplies this gas in downstream markets in Belgium, but also in other countries. Therefore the real overlap derived at the upstream level regarding wholesale sales to third parties would be around […] bcm, representing [5-10]% (instead of [5-10]%) for HCV gas and [0-5]% (instead of [5-10]%) for HCV gas + LNG. Moreover, all of Hydro's sales in Belgium are made to […] under a long-term contract expiring in […]. This contract represents less than [0-5]% of […]' needs, whose purchases from Hydro in 2005 and 2006 have been in the range of […] bcm[42]. In

41 Form CO; data for 2005.

42 Source Form CO.

any event, […] should be able to find an alternative source, if needed, within a very wide timeframe. Finally, Belgium has access to alternative sources of supply for HCV gas + LNG such as Gazprom ([10-20]%), Sonatrach ([20-30]%) or GasTerra ([5-10]%), and in the near future from the Qatari supplier Rasgas (who has contracted capacity for the Zeebrugge 2 terminal).

44. In the Czech Republic, Russian gas accounts for around 66% of the market. RWE Transgas, the national incumbent, entered into supply agreements with the parties to diversify its sources of supply. However, despite the fact that now RWE Transgas would lose one of its two alternatives to the Russian gas, it is not likely that the transaction will negatively affect this customer. Hydro supplies in fact Russian gas via a swap agreement with Wingas, and the Commission has no indications that RWE Transgas would not have the ability to obtain gas from other producers in the same way. In addition, Hydro's agreement ends by […], which in principle should allow RWE Transgas to find an alternative source, if needed, within a wide timeframe. Moreover, no concerns have been raised as regards this market.

45. With respect to France, the Netherlands and Germany, the impact of the transaction is more limited. The combined market shares are below 25%[43], and in each case the overlap represented by Hydro is below 5% (France [0-5]%, The Netherlands [0-5]% and Germany [0-5]%). Alternative sources of supply would be: (i) in Germany Gazprom ([40-50]%), GasTerra ([0-5]%) Dong ([0-5]%) and other sources (including domestic production) ([20-30]%) and (ii) in The Netherlands, GasTerra ([20-30]%), Gazprom ([10-20]%) and other sources[44] ([40-50]%). With respect to France, where there are significant imports of LNG (around 26.5% of the total supply), alternative sources would be Sonatrach ([10-20]%), Gazprom ([30-40]%) GasTerra ([5-10]%) and other sources ([20-30]%).

46. Based on the foregoing, the Commission considers that the transaction is not likely to give rise to significant competition concerns in this market.

Risk for coordinated effects on the market for upstream supply of natural gas

47. Given that the merger takes place in an oligopolistic setting and there exist structural links exist between the various players (e.g. through joint ownership of fields or platforms), it is necessary to also consider the extent to which the proposed merger could lead to coordinated effects.

48. The question might then be asked whether the merger between Statoil and Hydro could significantly increase the ability or incentives of the main market players to create a collective dominant position. The Commission considers that this possibility is not likely to be created as a result of this transaction.

49. The Commission takes this view although one of the main reasons underlying the merger is to enable the merged entity to become a more credible partner for new oil and gas projects outside the NCS. Consequently, the new entity, to the extent it is successful in this ambition, is likely over time to develop more links facilitating a collective

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43 For France, as it was the case for Belgium, the relevant product market considered is HCV gas + LNG.

44 Imports from the UK, Denmark and Germany.

dominant situation. However, given the difference in size between Statoil's and Norsk Hydro's upstream activities, it is not expected that this scenario will differ radically from one where Statoil were to develop in this direction on a stand-alone basis.

50. It must be borne in mind that the overall market position of the parties is relatively limited, as is the overlap created by the merger. Thus, whilst the merger would remove Hydro, with around [0-5]% market share at EEA level, seven other independent alternative suppliers would remain, such as Gazprom ([30-40]%), Sonatrach ([10-20]%), Gas Terra ([10-20]%), ExxonMobil ([10-20]%), Shell ([5-10]%), Total ([0-5]%) and BP ([0-5]%). It therefore seems difficult to sustain that Statoil with around [10-20]% of the EEA sales would not have (on its own) sufficient ability or incentives to engage in a collusive behavior together with other big players, but that the addition of Hydro with less than [0-5]% share of EEA deliveries would significantly change this situation in such a way that the proposed merger would significantly increase any likelihood of collusive behavior.

51. In addition, whereas the parties do not currently supply LNG, the role played by LNG imports has been increasing over time. Indeed, the available receiving capacity of LNG terminals in the EU have been estimated to double by 2010[45], and while in 2005 these imports represented around 9% of the EEA consumption, they are expected to achieve around 32% by 2030[46]. The upstream supplier base for LNG for supplies into the EEA is wider than the one for pipeline gas. In particular mid-Eastern countries such as Qatar and Oman, as well as African countries like Egypt and Nigeria (and in the future: Angola) as well as the Caribbean country Trinidad and Tobago can supply LNG to the EEA, thus making coordination more difficult, even considering that Statoil will soon produce LNG too[47].

52. Moreover, there are some additional factors which are likely to make a tacit collusion unstable. First, despite there being some transparency with respect to some gas volumes (traded in some incipient gas markets), the fact is that most of the volumes are sold via long term contracts with prices negotiated individually and that most incumbent buyers have a portfolio of seven or more counterparties[48]. 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. In particular, gas producers who are mainly active in the EEA through LNG cannot be assumed to have similar cost structures or marketing plans as those delivering mainly through pipelines. As an example, Qatar, which has important natural gas reserves, and has made important infrastructure investments for LNG exports, appears unlikely to have incentives that are closely aligned with other big players such as Gazprom or Sonatrach. Qatar is pursuing a strategy to become the world’s largest LNG exporter by the year 2010[49].

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45 From 74.8 bcm per year in 2005 to around 141.9 bcm per year by 2010.

46 See energy sector inquiry, § 871-874.

47 Form CO, footnote 60: Statoil will produce LNG as of the third quarter of 2007 from the Snøhvit field in the Barents Sea.

48 Energy sector inquiry, § 120-137

49 Form CO, §182, and reference made to the Sector Inquiry, § 879.

53. Based on the foregoing, the identifiable effects of the proposed merger on the gas markets do not give rise to serious doubts in the sense of the Merger Regulation.

B. Oil markets

54. The markets for (i) development, production and sale of crude oil, (iv) lubricants for automotive applications, (v) NGLs other than ethane, (vii) non retail sale of gasoline, (viii) base oils and additives and (ix) aviation fuel, are not affected markets given the lack of overlaps or, if they exists, because of the combined market shares being below 15% when the narrower possible relevant market definitions are retained.

B.1. Transport infrastructures

55. As to oil transport infrastructures in the NCS, Statoil and Hydro have a combined interest of above 50% in most of them. However, each pipeline has significant spare capacity (between [10-20]% and [60-70]% of the total capacity, depending on the pipeline) and the joint venture agreements or shareholders' agreements regulate voting rights over each infrastructure in such a way that the parties will not acquire control over them as a result of the proposed transaction[50]. Finally, the parties stress that the Norwegian law provides that third party access to offshore infrastructure should be on an objective and non-discriminatory basis, and all access to oil infrastructure is subject to the supervision of the Ministry of Petroleum and Energy.

B.2. Storage terminals

56. Regarding oil storage terminals, the parties have interest in two of them in Norway: Mongstad (Statoil 65%, the other partner being Petoro 35%) and Stura (Statoil 14%, Hydro 22.24%, the other partners being Petoro 48.38%, Total 8.65%, Mobil 4.33% and ConocoPhilips 2.4%). However, as it is the case for oil transport infrastructures, both terminals are subject to the third party access regime provided by the Norwegian law[51].

57. Therefore, the merger is unlikely to give rise to anticompetitive concerns on any market for oil infrastructures on the NCS.

B.3. Lubricants for industrial applications

58. If the market for lubricants for industrial applications is assessed at national level, Sweden would be an affected market. However, the transaction will have a limited impact. Post transaction, the combined market share of the parties in Sweden would be [20-30]% (Statoil [10-20]% and Hydro [0-5]%). At EEA level, the combined entity would have a combined market share of [0-5]% (Statoil [0-5]% and Hydro [0-5]%).

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50 Decisions can only be made when a double majority is achieved, i.e. a specified percentage of the ownership interests and a specified number of the joint venture members must have voted in favour of the proposal. Further, the voting rules are structured so that a licensee holding more than 50% of a licence normally cannot vote through a proposal on its own; it requires the support of one or more other partners. Finally, the parties underline that when a change in equity shareholdings in a pipeline takes place, (i) all the joint venture agreements require that the voting rules be amended with a view to maintaining the previous voting balance and (ii) these new voting rules are subject to the approval of the Ministry of Petroleum and Energy, and (iii) if the joint venture does not submit any proposal, the Ministry of Petroleum and Energy may determine new voting rules for the joint venture.

51 Article 4(8) of the Norwegian Petroleum Act.

Given the limited addition of overlap and the presence of alternative competitors such as Shell ([10-20]%), Mobil ([10-20]%), Castrol/BP ([5-10]%) or OK-Q8 ([5-10]%), the Commission considers that there is no risk of competition concerns arising from the transaction as regards this market.

B.4. NGL: ethane

59. Following the transaction, ethane would be an affected market only if the geographic market is considered to be, as the market investigation suggests, the EEA. The combined market share of the parties in terms of production would be around [20-30]% (Statoil [20-30]% and Hydro [0-5]%).

60. Ethane is only produced at Teeside and Mossmorran (UK) (from Ekofisk and some 20 other UK and Norwegian fields), and at Kårstø (Norway) (from some 23 fields and 14 different companies in the NCS). The customers are rather limited: an olefin plant in Mossmorran (UK), Yara (Norway), Borealis (Sweden) and Hydro Polymers (Norway).

61. However, for historical reasons, ethane produced at Teeside and Kårstø has not been sold directly to the customers by the various producers, but grouped together mainly by Statoil, Hydro […] on one hand, who sell the ethane produced at Kårstø, and some quantities from Teeside, to Borealis, Yara and Hydro Polymers; and ExxonMobile and Shell on the other hand, who sell the ethane produced at Teeside in the Mossmorran olefin plant. Borealis was previously jointly controlled by Statoil and a third company (Neste), while Hydro Polymers and Yara were part of Hydro.

62. Nowadays Borealis is owned by third companies, Yara is a listed company and Hydro Polymers is still owned by Hydro but is not part of this transaction. However, the commercial relationships of these three customers with Statoil and Hydro remain unchanged: the parties sell ethane produced by themselves and also by a large number of other producers, and sell it to the three customers […].

63. The parties however submit that, in fact, no market for ethane exists in the EEA, as it is not a liquid market, there is not quoted price as it is the case in the US, where it is traded as a commodity, and the limited amount of ethane produced in the EEA is supplied through long term contracts to very few players.

64. In any case, and regardless of whether the parties view is justified, it has to be assessed the situation post-transaction in which the three customers affected by the merger (Borealis, Yara and Hydro Polymers) would be supplied only by two suppliers instead of three. However, the market investigation has not revealed significant concerns from the market participants. But more importantly, the investigation has shown that, once the current contracts have expired (by[…]) there will be no obstacles for the customers to organize their purchases directly from the different suppliers instead of doing it through the merged entity.

65. Therefore, as the transaction will not have any significant impact on the volumes and prices sold to the affected customers up to […], and after this date, there will be a large amount of producers who will be able to replace Hydro, the Commission considers that the transaction is not likely to give rise to competition concerns as regards this market

B.5.Non-retail sale of LPG

66. The market for LPG is technically an affected market in Sweden, but the transaction does not bring about any significant structural change to the market dynamics, even under the narrower product market definition.

67. Should LPG sold in bottles and LPG sold in bulk be considered as a single relevant product market, the combined market share of the parties in Sweden would be [50-60]% (Statoil [50-60]%, Hydro [0-5]%). If two separate product markets are considered, the only overlap would take place as regards LPG sold in bulk, with a combined market share of [50-60]% (Statoil [50-60]%, Hydro [0-5]%).

68. In the light of the negligible presence of Hydro, the Commission concludes that no competition concerns arise from this transaction on the market for non-retail sale of LPG.

B.6.Non-retail sale of diesel

69. On the Scandinavian market for non retail supply of diesel the parties have a combined market share of [20-30]% (Statoil: [20-30]%; Hydro: [0-5]%). The parties are not able to provide an estimate of their competitors' market shares for Scandinavia, since they did not manage to gather data for Finland. However, the proposed transaction would give rise to a small increment of market share. Moreover, the parties are not active in Finland and when considering the other three Scandinavian countries (Denmark, Norway and Sweden) as a whole, it appears that there are several other significant competitors, namely Shell ([20-30]%), Preem ([10-20]%), YX ([10-20]%), OK ([5-10]%), Kuwait/Q8 ([5-10]%), ExxonMobil ([5-10]%), some of which being vertically integrated (Preem, Shell).

70. It comes from above that the proposed merger does not give rise to competition concerns on the Scandinavian market for non retail supply of diesel.

71. The parties' sales only overlap in Sweden, where they have a combined market share of [20-30]% (Statoil [10-20]% and Hydro [10-20]%). The merged entity will become the second largest player after Preem, which has [40-50]%. The third player is Shell with [20-30]%, followed by OK-Q8 (the market leader in the retail supply market) with around [5-10]%.

72. Despite the concentrated market structure, the merger is unlikely to strengthen the likelihood of coordinated effects on the Swedish market for non retail supply of diesel for the following reasons.

73. Firstly, the price competition occurs through non-transparent negotiations with business customers, who are the only customers, and secret volume rebates affect prices.

74. Secondly, the business model of the various competitors is not symmetric since only Preem and Shell have refineries in Sweden whilst other players have either to source from them, or from a limited number of alternative refineries abroad[52]. Preem and Shell therefore compete on both upstream and downstream margin, while others compete only on downstream margin.

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[52] […]

75. Thirdly, the vast majority of the respondents to the market investigation carried out by the Commission considered that customers can easily switch to another supplier and have often quoted Preem, Shell and even OK-Q8 as the best alternative to Statoil or Hydro.

76. Fourthly, non retail supply of diesel is a growing market: diesel demand has been growing by 4% per year over the period 2000-2005 in Sweden and is expected to grow over the next years[53]. This is likely to encourage competition as well as new entries on this market. As a matter of fact the market investigation revealed that this market is contestable since there is potential entry, such an entry taking only a few months.

77. Finally, the respondents to the market investigation have not raised significant anticompetitive concerns with respect to the proposed merger.

78. It comes from above that the proposed merger does not give rise to competition concerns on the Swedish market for non retail supply of diesel.

B.7 Non-retail sale of light heating oil (LHO)

79. On the Scandinavian market for non retail supply of LHO the parties have a combined market share of slightly above 15% (Statoil: [10-20]%; Hydro: [5-10]%). According to the data provided by the parties, there are several other significant players, some of which having market shares higher than the parties' combined market shares (Shell [20-30]%, Neste Oil [10-20]%, Teboil [10-20]%, Preem [5-10]%, Exxon Mobil [5-10]%, OK [5-10]%, YX [5-10]%, Kuwait/Q8 [0-5]%, Station1 [0-5]%).

80. Therefore the proposed merger does not give rise to competition concerns on the Scandinavian market for non retail supply of LHO.

81. The parties' sales only overlap in Sweden, where they have a combined market share of [30-40]% (Statoil [10-20]% and Hydro [10-20]%). In this market the merged entity will become the second largest player after Preem ([30-40]%), the third player being Shell ([20-30]%), followed by OK-Q8 ([5-10]%).

82. Despite the concentrated market structure, the merger is unlikely to strengthen the likelihood of coordinated effects on the Swedish market for non retail supply of LHO for the following reasons.

83. Firstly, the volumes sold to business customers represent the gist of this market (87%). Price competition occurs through non-transparent negotiations with business customers and secret volume rebates affect prices.

84. Secondly, although sales to individual households tend to be based on list prices, there are no signs that such list prices have been coordinated or that the merger is likely to have this effect.

85. Thirdly, as already mentioned for non retail sale of diesel, the business model of the various competitors is not symmetric in that the degree of vertical integration varies:

[53] PFC Report – Sweden – December 2006.

only Preem and Shell have refineries in Sweden and the other players have either to source from them, or from a limited number of alternative refineries abroad[54].

86. Fourthly, this market is rapidly declining (the market has reduced in size by 50% between 2001 and 2006) and is expected to decline over the next years. Indeed, the Swedish Government has started to implement a State programme (in place from 2006 to 2010) funding the conversion from LHO systems to alternative systems[55] and currently provides subsidies for the replacement of heating oil burners with alternative sources of heating and taxes LHO more heavily. Thus, Sweden is expected to be independent of oil for heating purposes by 2020[56]. The investigation has reported that this process has led to increased competition for the remaining LHO customers. Indeed, if LHO prices were to rise this would speed up the substitution of LHO systems by alternative systems.

87. Finally, the respondents to the market investigation have not raised significant anticompetitive concerns with respect to this market.

88. For the above reasons, the merger does not give rise to competition concerns in terms of coordinated effects on the Swedish market for non retail supply of LHO.

B.8. Retail sale of motor fuels in Sweden

1) Unilateral effects

All retail stations

89. The parties have a combined market share of [30-40]% in terms of sales volume (Statoil: [20-30]% Hydro: [10-20]%). There are four other main competitors (OK-Q8: [20-30]%, Shell: [10-20]%, Preem: [10-20]% and Jet: [5-10]%), followed by several other smaller competitors.

90. These market shares reflect the size of the competitors' stations network. Thus the new entity would own the first stations network in Sweden with a combined market share of 29.2% (Statoil: 15.4% Hydro: 13.8%), followed by OK-Q8 (24.1%), Shell (10%), Preem (13%) and at least seven other retail networks (each of them representing between 1% and 6% of all stations:).

91. As a result of the proposed merger, the new entity will still face significant competitors, some of which being vertically integrated (Preem and Shell operate refineries in Scandinavia).

92. Moreover, it is worth noting that Hydro's network is not the best substitute to Statoil's network: 80% of Hydro's network consists of unmanned stations whereas 86% of Statoil's stations are manned full-service outlets.

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54 […]

55 Such as district heating systems, bio fuel heating systems, geothermal heating pumps, lake source heating pumps, ground source heating pumps or solar heating.

56 Making Sweden an oil-free Society - Commission on Oil Independence, 21 June 2006

93. On the basis of the foregoing, the proposed transaction does not give rise to anti-competitive unilateral effects.

Submarkets: marine stations and diesel truck stations

94. When considering submarkets consisting of (i) marine stations, (ii) diesel truck stations and (iii) rural stations, only marine stations and diesel truck stations are affected markets[57].

95. As to marine stations, the parties have identified 77 such stations in Sweden[58]. Hydro and Statoil operate 40.3% of these 77 marine stations (Statoil 29.9% Hydro 10.4%). The other competitors identified by the parties are Shell (26%), OK-Q8 (20.8%) and Preem (13%).

96. Despite the apparent high combined share of the parties, the merger does not give rise to competition concerns in terms of unilateral effects on the market for marine stations for the following reasons.

97. Firstly, in terms of sales volume the parties' market share is lower ([30-40]%) and the increment is far smaller (Statoil: [20-30]% Hydro: [0-5]%).

98. Secondly, […] Hydro took the decision to close […].

99. Thirdly, the parties' marine stations do not overlap in terms of catchment area except in the Stockholm area where Hydro has only one marine station. However, there are other marine stations operated by the parties' competitors (namely: Shell, Preem, OK-Q8) in this area. In addition, […].

100. As to diesel truck stations, some suppliers have outlets which are only dedicated to truck diesel supply (e.g., TRB). Others, such as Statoil and Shell, have both such outlets and others which are part of a general service station. The parties have therefore reviewed the number of stations per company based on the principle as to whether a station includes a high speed pump.

101. The parties operate [30-40]% of such stations (Statoil: [10-20]% Hydro: [10-20]%) and the new entity will still face significant competitors, namely mainly Preem ([30-40]%), Shell ([10-20]%), OK-Q8 ([5-10]%) and TRB ([5-10]%).

102. Moreover Hydro's and Statoil's stations are not the best substitute to each other: […].

103. For the above reasons, the proposed merger does not give rise to competition concerns in terms of unilateral effects on the market for diesel truck stations.

2) Coordinated effects

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57 As to rural stations, the parties operate […] stations (Statoil: […] Hydro: […]) out of around 1000 rural stations in Sweden.

58 The Parties claimed that they are aware that there are some local independent operators of marine stations in Sweden but in the absence of public available information and in light of the small volume supplied by marine stations, they were unable to assess the number of these stations.

104. The proposed merger takes place in a country where the five main current competitors (Statoil, Hydro, OK-Q8, Shell and Preem) were involved in concerted practice regarding price reductions and rebates for payments with credit cards whose object was to restrict competition on retail sales of motor fuels in Sweden in 1999. As a result of a procedure initiated by the Swedish Competition Authority (SCA), the Swedish Market court imposed fines on these five competitors[59].

105. Given the relatively high levels of concentration on this market and the past cartel case mentioned above, the Commission has therefore examined whether the proposed merger would be likely to encourage coordinated effects.

106. After having carried out a thorough market investigation, the Commission has concluded that, given several market features explained below, the proposed merger does not make coordinated effects more likely than absent the merger.

107. Firstly, as mentioned above, besides the six current main networks there is a significant number (at least seven) of smaller retail networks representing around 18.5% of the Swedish stations. Moreover one of those smaller retailers, Station1, has recently entered the Swedish market[60] and is targeting a network of over […] stations at the end of 2008 by adding […] new service stations per month[61].

108. Secondly, the six main players are composed quite differently and have, as already mentioned above for the non-retail markets, different business models. As a matter of fact, some operate mainly manned service stations, offering fast food (e.g. Shell Select), or car accessories, snacks and confectionery (e.g. OK-Q8), or a general convenience store model (e.g. Statoil). These stations may even focus more on sales of non-gasoline products than on gasoline products. Other networks are mainly or exclusively focussed on gasoline sales (e.g. Jet, Hydro and other unmanned stations). In this context, the main networks have significantly different average throughput per station, ranging from Hydro with […]m^3/site/year and OK-Q8 on […]m^3/site/year to Jet with […]m^3/site/year, whereas Statoil, Preem and Shell are reported as having average throughputs of […]m^3/site/year, respectively.[62].

109. Thirdly, although retail prices are transparent in the market place, retailers also compete with rebates, by the way of payment cards that they issue, which is less transparent than competing directly with prices. About 70% of Swedish retail sales are made through such payment cards. Furthermore, there is also competition based on non-transparent price negotiations with business customers on the discounts offered for each supplier's payment cards. For Statoil, this involves some […]% of its retail sales. All

[59] In June 2000 the SCA made a summons application to the Stockholm City Court concerning an alleged infringement of the Swedish equivalent to Article 81 EC. The City Court issued its judgement in April 2003. The judgement was appealed to the Market Court, which made its final judgement in February 2005.

60 Station1, which is a significant actor on the Finnish market for the retail sales of gasoline (with a market share of 11% there) and has recently entered the Polish market, opened its first service station in Sweden in September 2004. As of January 2007, Station1 operates 39 stations in Sweden.

[61] PFC Energy Report for Downstream Monitoring Service – Sweden - December 2006.

62 Ibid.

respondents to the market investigation have stressed the importance of the role played by these payment cards on the retail sale competition[63].

110. Fourthly, the retail margin for motor fuels in Sweden has been consistently deteriorating since 2001 ([…]% over the period 2001-2005)[64]. Such deterioration is likely to strengthen competition among Swedish retailers.

111. Finally, the respondents to the market investigation have not raised any significant anticompetitive concerns with respect to retail of motor fuels in Sweden.

V. CONCLUSION

112. 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.

For the Commission
(signed)
Olli REHN
Member of the Commission

63 The role played by these payment cards explains why the major retailers met together in 1999 in order to set up a concerted practice regarding price reductions and rebates.

64 -[…].