

EN

Case No
**COMP/M.6294-
SHELL/RONTEC
INVESTMENTS**

Only the English text is available and authentic.

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

Article 4(4)
Date: 01.08.2011



EUROPEAN COMMISSION

Brussels, 01.08.2011

C(2011) 5684

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying party

To the UK Competition Authority

Subject: Case No COMP/M.6294 - SHELL / RONTEC INVESTMENTS LLP

Reasoned submission pursuant to article 4(4) of Regulation No 139/2004¹ for referral of the case to the UK.

Date of filing: 04.07.2011

Legal deadline for response of Member States: 26.07.2011

Legal deadline for the Commission decision under Article 4(4): 09.08.2011

Dear Sirs,

I. INTRODUCTION

1. On 4 July 2011, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the proposed transaction cited above and described below. The Parties request that the proposed transaction be examined in its entirety by the competent authority of the United Kingdom (the "UK") (the "referral request").
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to a transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.

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 the present decision.

3. A copy of the Reasoned Submission was transmitted to the Member States on 7 July 2011.
4. By letter of 20 July 2011, the UK Office of Fair Trading (the "OFT") as the competent authority of the United Kingdom informed the Commission that the UK agrees with the proposed referral.

II. THE PARTIES

5. **Royal Dutch Shell plc** ("Shell", England and Wales) is active in the worldwide exploration, production and sale of oil and natural gas, the production and sale of oil products and chemicals, power generation and the production of energy from renewable sources. Shell's downstream business is active in the refining of crude oil into a range of refined products that are marketed around the world for domestic, industrial and transport use. Marketing activities include the retail of motor fuels and related products².

III. THE OPERATION

6. The proposed transaction relates to the acquisition by Shell UK Limited, a wholly owned subsidiary of Shell, of 254 petrol stations (the "Stations") located in the UK from a consortium of companies (known as Rontec Investments LLP) formed by GMR Capital Limited, Investec plc, Grovepoint Capital LLP and Bentinck Investments (Carried Interest) LP (the "Consortium") (the "proposed transaction").
7. The Stations are currently owned by Total Group ("Total", France) and will be acquired by Shell as part of a series of transactions. [...] the Consortium will acquire Total's entire estate of UK petrol stations (the "Consortium/Total Transaction") [...] (Shell and the Stations are further referred to as the "Parties").
8. The proposed transaction and the Consortium/Total Transaction were signed simultaneously on 21 June 2011. [...]. As such, the Consortium/Total Transaction and the proposed transaction are not interdependent and constitute separate concentrations for the purpose of Article 3 of the Merger Regulation³.
9. The proposed transaction constitutes an operation concentration within the meaning of Article 3 of the Merger Regulation.

IV. EU DIMENSION

10. The Consortium/Total Transaction does not meet the thresholds contained in Article 1(2) of the Merger Regulation. Therefore, it will not be subject to notification to the Commission, but to the UK competition authorities (the OFT), pursuant to the Enterprise Act 2002.
11. However, the proposed transaction has an EU dimension since the thresholds set out in Article 1(2) of the Merger Regulation are met. Indeed, the aggregate worldwide

² Further information can be found at: www.shell.com.

³ and for the purpose of paragraphs 38-41 of the Commission Consolidated Jurisdictional Notice

turnover of the companies concerned exceeded EUR 5 billion in 2010 (Shell: €277,624 million, the Stations: €...) while Shell generated an EU-wide turnover of €... in 2010 and the Stations €...]. Only the Stations generated more than two thirds of their turnover in one Member State, the UK.

V. ASSESSMENT

A. Relevant product and geographic markets

12. The Parties submit that the proposed transaction does not lead to vertically affected markets⁴. The only area of horizontal overlap between the activities of Shell and the Stations is the retail sale of motor fuels in the UK whose geographic scope is national or even local.
13. As for the product market definition, the Commission's approach has consistently been that there is a relevant product market of the sale of retail motor fuels, with no need for a further distinction between different types of fuel⁵. In addition, the Commission has considered a separate product market for the retail sale of motor fuels on motorways⁶. The OFT has also defined the relevant product market to be the retail sale of motor fuels, having regard to the ease of switching on the supply side⁷. As reported by the Parties, the OFT has not previously considered whether there is a separate product market for the retail sale of motor fuels on motorways.
14. In respect of geographic market, the Commission has either assessed the markets for retail supply of motor fuels at national level or it left the geographic market definition open⁸. It has also been pointed out in its decision making process that there is a strong local element to the retail fuel market⁹. By contrast, according to the Parties, the OFT has consistently viewed the geographic market for retail sales of motor fuels to be local.
15. Therefore, there is no overlap between the Parties outside the UK, and there are no affected markets at world-wide, EEA, EU or EFTA levels. The effects of the proposed transaction are therefore confined to distinct markets within a single Member State, the UK.

⁴ The Parties indicated that Shell's share of supply does not exceed 25% on either of the markets for non-retail or ex-refinery sales of motor fuels.

⁵ Case COMP/M.5846 - *Shell/Cosan/JV*, paragraph 16 or Case COMP/M.5781 - *Total Holdings Europe SAS/ERG SPA/JV*, paragraph 16.

⁶ Case COMP/M.5005 - *Galp Energia / Exxonmobil Ibéria*, paragraph 13, Case No IV/M.1383 - *Exxon/Mobil*, paragraph 437; Case No COMP/M.1628 - *TotalFina/Elf*.

⁷ Completed merger between Co-operative Group Limited and Lothian Borders & Angus Co-operative Society Limited, OFT decision of 18 March 2009, paragraph 110.

⁸ Case COMP/M.5781 - *Total Holdings Europe SAS / ERG SpA / JV*, paragraph 31; Case COMP/M.5796 - *ENI / Mobil Oil Austria*, paragraph 13; Case COMP/M.5846 - *Shell / Cosan / JV*, paragraph 21 or Case COMP/M.1383 - *Exxon/Mobil*.

⁹ Case COMP/M.5781 - *Total Holdings Europe SAS / ERG SpA / JV*, paragraph 31.

B. Assessment

16. In the light of the foregoing, the Commission considers that the relevant geographic markets are likely to be at the widest national in scope.
17. The conditions for an affected market in the sense of the Form RS¹⁰ are met as the companies involved are engaged in business activities in the same product market and the concentration will lead to a combined market share of [...] % at national level and in some regions the proposed transaction will reduce the number of competitors (including the merged entity) to three or even fewer¹¹. As a consequence, the proposed transaction may significantly affect competition at least in some of the potential relevant markets.
18. In view of the foregoing, the preliminary assessment suggests that the principal effects of the proposed transaction would be restricted to the UK. Further, the markets in question present all the characteristics of a distinct market.
19. Given that the likely focus of the competitive effects of the proposed transaction is confined to the United Kingdom, the UK Office of Faire Trading is best placed to examine the case.

VI. REFERRAL

20. On the basis of the information provided by the Parties in the Reasoned Submission, the proposed transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation in that it may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations¹² (point 17) indicates that, in seeking a referral under Article 4(4), "the merging parties are ... *required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*", and that "*such indications may be no more than preliminary in nature...*". The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the proposed transaction may significantly affect competition at least in some of the relevant markets and that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom. Therefore, the referral request would be consistent with point 20 of the notice.

¹⁰ Section 4 of Annex III of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 134/2004 on the control of concentrations between undertakings, O JL 133, 30/04/2004, p. 1-39.

¹¹ This demonstrates that with regard to the proposed transaction competition concerns may raise as in some areas where maximum two competitors in addition to the merged entity will remain. In case COMP/M.4919 - *StatoilHydro/ConocoPhillips*, the Commission **ruled out** local competition concerns in local areas where "**at least 3 competitors** will be present" in addition to the merged entity.

¹² OJ C 56, 05.03.2005, p.2.

VII. CONCLUSION

21. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the proposed transaction in its entirety to be examined by the Office of Fair Trading of the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission

(signed)
Alexander ITALIANER
Director General