EN

Case No COMP/M.6801 - ROSNEFT/ TNK-BP

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 08/03/2013

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EUROPEAN COMMISSION

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Brussels, 08/03/2013
C(2013)1513

PUBLIC VERSION

MERGER PROCEDURE

To the Notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.6801 - ROSNEFT/ TNK-BP
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 01.02.2013**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which OJSC OIL COMPANY ROSNEFT ("Rosneft", Russian Federation) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of TNK-BP Limited ("TNK-BP", British Virgin Islands) by way of purchase of shares (Rosneft and TNK-BP are designated hereinafter as the "parties to the proposed transaction")[2].

1. THE PARTIES AND THE OPERATION

2. **Rosneft** is a Russian public company, which is primarily engaged in the exploration and production of crude oil and natural gas, as well as the production and marketing of refined products, including several petrochemical products. Rosneft is indirectly owned by the Russian State as 75.16% of its shares are held by OJSC Rosneftegaz, a holding company wholly-owned by the Russian Federation.

3. **TNK-BP** is a private company headquartered in the British Virgin Islands, which is active in the exploration and production of crude oil and natural gas, as well as the production and marketing of petroleum products and petrochemicals. TNK-BP is currently owned 50% by BP plc (indirectly through BP Russian Investments Limited, a wholly owned subsidiary of BP plc), 25% by Alfa Petroleum Holdings Limited (a member of the Alfa group), and 25% by OGIP Ventures, Ltd. (a 50/50 joint venture vehicle between Access Industries and the Renova Group). Alfa Petroleum Holdings

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 37/10, 9 February 2013, p. 34.

Limited, Access Industries and the Renova Group are together referred to as the "AAR shareholders".

4. The proposed transaction consists of the acquisition by Rosneft of sole control of TNK-BP. Rosneft proposes to acquire 100% of the voting securities of TNK-BP as well as 100% of the income shares in TNK Industrial Holdings Limited (the latter being a 100% subsidiary of TNK-PB) from both BP Plc and the AAR shareholders. Such acquisition will be made pursuant to two sets of agreements, the Rosneft-BP agreements[3] and the Rosneft-AAR agreements[4]. Pursuant to the Rosneft-BP agreements, Rosneft is to acquire BP's 50% share of the voting securities in TNK-BP as well as its 50% ownership of the income shares in TNK Industrial Holdings Limited. Pursuant to the Rosneft-AAR agreements, Rosneft is to acquire the respective 25% shares of the voting securities in TNK-BP as well as the respective 25% shares of the income shares in TNK Industrial Holdings Limited currently held by Alfa Petroleum Holdings Limited on the one hand and OGIP Ventures, Ltd. on the other hand.

5. These two agreements constitute a single concentration under Article 3 of the Merger Regulation. Although the Rosneft-BP agreements and the Rosneft-AAR agreements are not legally cross-conditioned, they constitute a series of transactions in securities whereby control is acquired over one undertaking within a reasonably short period of time.[5] Rosneft is under a legal obligation to close both transactions upon receipt of regulatory approval and also has strong financial and operational interests in closing both transactions as quickly as possible. Thus, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[6] (Rosneft: EUR 66 221 million; TNK-BP: EUR 43 246 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Rosneft: EUR […] million; TNK-BP: 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 pursuant to Article 1(2) of the Merger Regulation.

7. As mentioned above, Rosneft is indirectly owned by the Russian State. In order to make a proper competitive analysis of the proposed transaction, it is necessary to verify if Rosneft and other Russian state-owned entities ("SOEs") active in the oil and gas sector, namely Gazprom, Zarubezhneft and Transneft, are deemed to constitute one single economic unit and if their respective market positions should be combined. In the present case, a number of factors considered as a whole strongly suggest that the Russian Federation participates in major decision making as well as the selection of senior management of Rosneft, and therefore Rosneft cannot be deemed to have an independent power of decision from the Russian Federation within the meaning of Recital 22 of the Merger Regulation. These factors are:

3 [Rosneft-BP agreements].

4 [Rosneft-AAR agreements].

5 In accordance with recital 20 of the Merger Regulation and Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1), paragraph 48.

6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice.

- The members of the Board of Directors of Rosneft are appointed and removed and their remuneration is set by [corporate organization] of votes of the shareholders. With 75.16% of the shares, the Russian Federation (through Rosneftegaz) represents more than the majority at shareholders meetings.

- The Board of Directors consists of [corporate organization] members, [corporate organization] of which represent the Russian Federation, while the remaining [corporate organization] are independent directors. As regards interlocking directorships — a factor which has been taken into account in previous cases to justify an aggregation of turnover -, [corporate organization] members of the current Board of Directors are concurrently members of other Russian state-owned enterprises, [corporate organization] of which are active in the oil and gas industry.

- The Board of Directors, by [corporate organization] vote, approves Rosneft's long-term strategy as well as the plans for its financial and business operations. In addition, for a number of specific matters, the state-nominated members of the Board of Directors are required by law to cast their vote in accordance with any directives issued by the Russian Government[7]. These matters include the election or dismissal of the CEO, the approval of major transactions and the participation/termination of participation in other entities.

- Thus, pursuant to the decision-making process within Rosneft, and as confirmed by the parties, the Russian State (through Rosneftegaz) is able to influence strategic business decisions [corporate organization]. In particular, as to the present proposed transaction, the acquisitions of each of the BP and AAR shareholdings were approved under Rosneft's ordinary decision-making procedures (i.e. approval by [corporate organization]). Moreover, in October 2012, upon signing the proposed purchase of TNK-BP, Rosneft's CEO Mr Sechin met with President Putin to brief him, and reportedly stated that Rosneft had undertaken the proposed transaction "*following on from* [President Putin's] *instructions on making Rosneft more effective*"[8]. [corporate organization].

8. In light of the above, the Russian Federation does indeed have major powers to involve itself in Rosneft's commercial behaviour in a strategic manner, in particular as regards the right to interfere with strategic investment decisions. However, for the purpose of establishing jurisdiction, there is no need to decide whether turnover of other companies owned by the Russian Federation should be taken into account, as the turnover thresholds are met on the basis of the parties' turnover alone.

9. On the other hand, the competitive analysis of the proposed transaction is undertaken under a "worst case scenario" where Rosneft and other Russian state-owned entities ("SOEs") active in the oil and gas sector, namely Gazprom, Zarubezhneft and Transneft, are deemed to constitute one single economic unit and their respective market positions should be combined.

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7 Government Resolution No. 738 on managing Shares of Joint-Stock Companies being in Federal Ownership and on Exercising the Special Right of the Russian State to Participate in Managing Joint-stock Companies ("Golden Share") of 3 December 2004.

8 See report of the meeting held between President Putin and Mr Sechin on 22 October 2012 available at http://eng.kremlin.ru/news/4544.

3. COMPETITIVE ASSESSMENT

10. Rosneft and TNK-BP are both active on the upstream markets for the exploration of natural gas and crude oil, the development, production and sale of natural gas as well as the development, production and sale of crude oil. At the same time, the parties are both active on a number of downstream markets for the supply of refined products, including heavy fuel oil.

3.1. Horizontal relationships

11. The parties' activities overlap in a number of product segments, however, the parties submit that none of them gives rise to an affected market[9], except under the "worst case scenario" approach, where the combined shares of Rosneft, all Russian SOEs active in the oil and gas sector, and TNK-BP would only exceed 15% as regards the development production and sale of natural gas (on a global basis). In addition, as some concerns were raised during the Commission market investigation regarding (i) the markets for the development, production and sale of crude oil, and (ii) the markets for production and supply of heavy fuel oil, these will be analysed below in detail.

3.1.1. The development, production and sale of natural gas

3.1.1.1. Relevant product and geographic markets

12. The Commission has previously defined separate product markets for (i) the exploration of crude oil and natural gas, which it considered to be EEA-wide or even world-wide in scope, (ii) the development, production and sale of natural gas, which it considered to be regional, national or even smaller, depending on the level of the supply chain (import/wholesale, sale to industrial customers and electricity generators, sale to household customers) that the supply takes place.[10]

3.1.1.2. Competitive assessment

13. Both Rosneft and TNK-BP are active in the development, production and sales market of natural gas within the territory of the Russian Federation. In addition, under the assumption that Rosneft and other Russian SOEs are to be considered a single economic entity for the purpose of the competitive assessment, the activities of Gazprom JSC ("Gazprom"), one of the largest producers and suppliers of natural gas world-wide, would have to be attributed to Rosneft.

14. However, insofar as gas exports from the Russian Federation are concerned, both Rosneft and TNK-BP are precluded from supplying gas into the EEA, since Russian law provides for a legal monopoly of Gazprom for the export of natural gas.[11] The

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[9] As defined in part III of section 6 of Form CO Relating to the Notification of a Concentration pursuant to Regulation (EC) No 139/2004.

[10] Case COMP/M.1532, BP Amoco/Arco, Commission decision of September 29, 1999, para. 14; Case COMP/M.1383, Exxon/Mobil, Commission decision of September 29, 1999, para. 16; Case COMP/M.3440 – EDP/ENI/GDP, Commission decision of 9 December 2004; Case COMP/M.3696 – E.ON/MOL, Commission decision of 21 December 2005; Case COMP/39315 – ENI, Commission decision of September 29, 2010.

[11] Pursuant to paragraph 1 of Article 3 of the Federal Act No. 117-FZ on Gas Export of July 18, 2006, only the owner of the Unified Gas Supply System ("UGSS"), i.e. Gazprom, is entitled to export gas out of the Russian Federation. Gazprom currently holds full ownership of the UGSS and is therefore the only entity permitted, under the applicable Russian laws, to export gas out of the Russian State.

parties explain that in the event either Rosneft or TNK-BP sells gas to Gazprom, the ownership (title) of the gas typically passes at the tie-in point to the Unified Gas Supply System ("UGSS") owned and operated by Gazprom.

15. It follows that any increment in Rosneft/Gazprom’s market share as a result of the acquisition by Rosneft of TNK-BP would be limited to the domestic Russian market, as TNK-BP is prevented by Gazprom’s legal monopoly to sell gas outside the territory of the Russian Federation. Therefore, the operation does not lead to any competitive overlap in any relevant product and geographic market for the development, production and/or sale of natural gas that would affect the territory of the EEA.

3.1.2. The development, production and sale of crude oil

3.1.2.1. Relevant product and geographic markets

16. The Commission has previously defined a separate product market for the development, production and sale of crude oil, which it considered to be worldwide in scope.[12] The parties agree with this market definition.

17. As regards the geographic scope of the relevant market, the parties submit that they only sell their crude oil to large international oil producers as well as to international commodity trading companies, which subsequently sell the crude oil onwards on a global basis. Therefore, they submit that the geographic scope should be worldwide~~.~~

18. However, part of the supply of crude oil from the parties to the EEA is transported via the "Druzhba" pipeline from Russia through Belarus and Poland to the Polish-German border near Schwedt (northern leg of the pipeline) as well as through Belarus and Ukraine to Slovakia, the Czech Republic, Hungary and Croatia (southern leg of the pipeline). The parties submit that OJSC Transneft (“Transneft”), a Russian SOE, controls access to the Druzhba pipeline, through which crude oil is transported to landing points in Lithuania, Poland, Germany, the Czech Republic, Slovakia, and Hungary. The access to the Druzhba pipeline system in Russia[13] is regulated[14]. It essentially implies that services for the transportation of crude oil are provided under a transportation services agreement concluded between the suppliers of crude oil and Transneft on an annual basis. Any such agreement specifies the procedure for the acceptance, transportation, and transfer of crude oil, the quality and quantity of crude oil (including export amounts), the delivery and destination points, the payment procedure, and the rights and obligations of the parties. To enter into a transportation services agreement, oil producers are required to submit an application (indicating the material terms and conditions) before a certain date in the year preceding transportation.

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12 COMP/M.1532 – BP Amoco / Arco, Commission decision of 29.9.1999; COMP/M.2681 – Conoco / Philipps Petroleum, Commission decision of 6.3.2002; COMP/M.1383 – Exxon / Mobil, Commission decision of 29.9.1999.

13 Outside of Russia, access to the Druzhba pipeline is controlled by separate governmental organizations in each country.

14 By the Federal Act No. 147 FZ on Natural Monopolies of August 17, 1995, as amended (the “Natural Monopolies Act”) and Resolution No. 218 of the Russian Government of March 29, 2011 (“Resolution No. 218”), approving the Rules of Securing Non-Discriminatory Access to Services of State Natural Monopolies in Transportation of Crude Oil (Petroleum Products) via Trunk Pipelines.

19. Accordingly, notwithstanding the fact that the parties' direct customers may be actively buying and selling crude oil on a global basis, they sell part of their crude oil purchases on to certain refineries that obtain crude oil via the Druzhba pipeline. Although the downstream refineries' suppliers of crude oil (be it trading companies or oil producers) may be capable of sourcing crude oil at a global level, it cannot be ruled out that for certain clusters of refineries located at specific exit points of the Druzhba pipeline in certain EEA Member States, the choice of upstream crude oil suppliers can be limited to those that are capable of directly supplying them via the Druzhba pipeline (i.e. to those upstream suppliers that have been granted access to the Druzhba pipeline).

20. A number of respondents to the Commission's market investigation indeed explained that for certain refineries having a direct connection to the Druzhba pipeline, the crude oil thus supplied could not be substituted with a supply of crude oil by other means, or only to a limited extent. On the basis of all of the foregoing, it cannot be ruled out that the geographic scope of the market for the supply of crude oil to the refineries located at exit points of the Druzhba pipeline in certain EEA Member States could be smaller than global, limited to the Druzhba pipeline as such, or to its various exit points.

21. In any event, for the purposes of this decision, the exact delineation of the relevant product and geographic market can be left open as the proposed transaction will not give rise to competition concerns irrespective of the market definition retained.

3.1.2.2. Competitive assessment

22. The parties submit that their combined worldwide share in the market for the development, production and sale of crude oil is small ([5-10]%), therefore not giving rise to competition concerns.

23. As stated in paragraph 20, the narrowest potential relevant market comprises the supply of crude oil geographically limited to specific exit points of the Druzhba pipeline. The parties' activities on such potential markets only overlap in respect of Germany and Poland.

24. During the Commission's market investigation, one of the parties' crude oil customers raised a concern that the merged entity may decide to increase the price of crude oil supplied to refineries located in certain geographic areas that are connected to exit points of the Druzhba pipeline (notably in Germany and Poland). This customer submitted that (i) there are no or limited alternative means of crude oil transportation for refineries that are directly connected to the Druzhba pipeline, and (ii) the parties would account for the majority of the total crude oil supplied via the Druzhba pipeline while the remaining is accounted for by smaller companies, not capable of exerting significant price pressure on the merged entity. The parties however submitted that they account for around [40-50]% (captive sales included) of the total volume of crude oil supplied via the Druzhba pipeline.

25. Apart from the parties, other crude oil suppliers such as Surgutneftegaz, Lukoil, Bashneft, Tatneft and Surgut can and do supply oil through the Druzhba pipeline. In addition, certain traders (including Mercuria Trading and Sunimex) and direct purchasers (Lotos and Plotsk) also arrange transport supplies of crude oil through the Druzhba pipeline. Consequently, a large number of competitors remain post-merger. The Commission's market investigation also showed that the crude oil transported via the Druzhba pipeline is a highly homogeneous product. Accordingly, the crude oil

supplied by the parties' upstream competitors that also have access to the Druzhba pipeline is likely to continue to serve as a constraint on their incentive to raise prices, as no specific consumer preference exists in relation to the parties' crude oil.[15] Furthermore, the parties submit that it would not be profitable or rational for Rosneft to limit its supply of crude oil to one part of a global market. Finally, the Commission's market investigation also indicated that the Druzhba pipeline currently has technical excess capacity which the parties' competitors could apply to use. Finally, the refineries in Germany and Poland indicate that they are technically capable of switching to an alternative means of supply via seaborne vessel and subsequent pipeline[16]. Should the merged entity increase the price of its crude oil transported via the Druzhba pipeline, it is therefore very likely that its customers would switch to a supply of crude oil via seaborne vessel and subsequent pipeline for part or whole of their requirements.

26. More in particular, as for **Germany**, the parties did confirm that their combined market share amounts to around [60-70]% of the total crude oil supplied via the Druzhba pipeline; however all of Rosneft's current supply to Germany (around [20-30]% of the total volume of crude oil supplied via the Druzhba pipeline to Germany) are captive sales to the Ruhr Oel GmbH refineries, which are jointly controlled by Rosneft. In addition, the parties' share of the supply of crude oil via the Druzhba pipeline to Germany only accounts for less than [10-20]% of gross inland consumption. Also, crude oil supplies made via the Druzhba pipeline to the connected refineries can be substituted by other means of supply, due to the existence of the Rostock-Schwedt-Leuna pipeline connecting the Druzhba pipeline to the sea port of Rostock (which already supplies directly to the PCK refinery in Schwedt)[17] and the MVL pipeline (supplying oil to refineries in Schwedt and Spergau and connecting to the Druzhba pipeline near Schwedt)[18]. Finally, to a limited extent, rail and truck can be used in addition to these pipelines. One respondent to the Commission's market investigation confirmed that the German refineries with direct connections to the Druzhba pipeline are currently also being fed crude oil through alternative sections of the Rostock-Schwedt-Leuna pipeline and the MVL pipeline. In addition, as regards the German refineries served by the Druzhba pipeline, the Commission's market investigation indicated that, as regards Germany, the cost differential between transport via pipeline and transport via seaborne vessel followed by pipeline is limited. Therefore, as regards the parties' supplies of crude oil via the Druzhba pipeline to Germany, the proposed transaction does not give rise to competition concerns.

27. As for **Poland**, the proposed transaction likewise does not give rise to competition concerns given that: (i) the parties' share of the supply of crude oil via the Druzhba pipeline to Poland only accounts for approximately [40-50]% of gross inland consumption, and (ii) the parties' crude oil appears to only reach the two refineries that are directly connected to the Druzhba pipeline, both of which can substitute their

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15 Cf. Commission's non-horizontal Guidelines (2008/C 265/07), paragraph 38 and Commission's horizontal Guidelines (2004/C 31/03), paragraph 28.

16 http://www.pck.de/en/unternehmen/unternehmen-gf.html; http://www.orlen.pl/EN/In estorRelations/AnnualReport/Documents/Annual_report_2011.pdf.

17 http://www.pck.de/en/unternehmen/unternehmen-gf.html.

18 http://www.mvl-schwedt.de.

crude oil supplies to a supply via the Gdańsk-Płock pipeline[19] (a reversible section connecting the Druzhba pipeline to the sea port of Gdańsk).

28. Therefore, the proposed transaction does not give rise to competition concerns as regards the market for the supply of crude oil under any conceivable market definition.

3.1.3. The production and supply of heavy fuel oils

3.1.3.1. Relevant product and geographic markets

29. The Commission has previously identified separate product markets for the production and supply of heavy fuel oil and of light fuel oil.[20] As regards the geographic scope of these markets, the Commission has previously found the market for the production and supply of heavy fuel oil, being a refinery by-product, to be at largest national.[21]

30. As regards the production and supply of refined fuel products, the Commission has previously however considered a distinction between different levels of the distribution chain. Accordingly, sales made at the ex-refinery level (fuels sold directly from the refinery to third parties in cargo), the wholesale (non-retail) level (the re-selling of refined fuel products by wholesalers to retailers and other large industrial customers)[22] and the retail level could constitute separate relevant product markets, which has been confirmed in relation to motor fuels.[23] As regards fuel oil, the Commission has previously distinguished a separate relevant market comprising non-retail sales.[24]

31. The parties submit that both Rosneft and TNK-BP are only active in the "ex-refinery/cargo" sales of heavy fuel oils. According to the parties, ex-refinery/cargo sales of heavy fuel oils constitute a separate relevant product market from other sales (wholesale and retail) of heavy fuel oil, and the geographic scope of such a market for ex-refinery/cargo sales of heavy fuel oil is at least EEA-wide (and possibly worldwide). The Commission has previously considered a market for ex-refinery sales of refined fuel products either likely to be EU/Western Europe wide[25] or regional wide[26] or wider than the EU region[27].

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19 http://www.orlen.pl/EN/In estorRelations/AnnualReport/Documents/Annual_report_2011.pdf. Although the Polish refineries are mainly supplied with Russian Export Blend Crude Oil ("REBCO"), they seemingly also procure other crude oil blends.

20 COMP/M.4348 – PKN/Mazeikiu, Commission decision of 11 July 2006.

21 COMP/M.4348 - PKN/Mazeikiu, citing COMP/M.3110 Southern German Package, Commission decision of 11 June 2003, and COMP/M.574 - Saudi Amraco / Moh, Commission decision of 23 May 1995.

22 COMP/M.5846 – Shell/Cosan/JV, Commission decision of 3 January 2011.

23 COMP/M.6261 – North Sea Group/Argos Groep/JV, Commission decision of 27.9.2011, paragraph 28; COMP/M.5846 – Shell/Cosan/JV, Commission decision of 3 January 2011; COMP/M.5005 GALP Energia/ExxonMobil, Commission decision of 31 October 2008; COMP/M.4588 – Petroplus/Coryton Refinery Business, Commission decision of 26 April 2007; COMP/IV.M.727 – BP/Mobil, Commission decision of 7 August 1996, paragraph 28 and COMP/M.6151 – Petrochina/Ineos/JV, Commission decision of 13 May 2005, paragraph 26.

24 COMP/M.3516 – Repsol YPF/Shell Portugal, Commission decision of 13 September 2004; COMP/M. 1628 - Totalfina/Elf, Commission decision of 9 February 2000 and case COMP/M.1859 - ENI/GALP, Commission decision of 29 June 2000.

25 COMP/M.727 – BP/Mobil.

26 COMP/M.3291 – PREEM/SKANDINAVISKA RAFFINERADI.

27 COMP/M.4348 – PKN/Mazeikiu.

32. In any event, with regard to heavy fuel oil, for the purposes of this decision, the exact delineation of the relevant product and geographic market can be left open as the proposed transaction will not give rise to competition concerns irrespective of the market definition retained, given the highly limited overlap and increment in the parties' activities on the basis of all the possible product and geographic market definitions considered above. Given the fact that the parties are not active at the wholesale level of the distribution chain, the following section deals with the parties' overlapping activities at a potential separate ex-refinery/cargo level (in line with the parties' submissions) as well as at a combined ex-refinery/cargo and wholesale level (in line with Commission precedents[28]).

3.1.3.2. Competitive assessment

33. As regards ex-refinery/cargo sales of heavy fuel oils only, the Parties' combined shares in this segment amounts to about [5-10]% on an EEA-wide basis and less than [5-10]% on a global basis (or [5-10]% on an EEA-wide basis and just below [5-10]% including all Russian SOEs), and therefore do not give rise to any affected market. Moreover, the acquisition of TNK-BP results in an increment in Rosneft's market share of [0-5]% in the EEA and less than [0-5]% on a global basis.

34. As regards the combined ex-refinery/ cargo sales and wholesale sales, the parties submit that they manufacture all of the fuel oil supplied within the EEA at facilities located outside the EEA and that nearly all the fuel oil sold by the Parties in the EEA is sold to large international traders active on a global basis. They are therefore unaware of the final customer/destination and thus cannot reliably allocate volumes/turnover between each EEA Member State. Indeed, as the Commission found in a previous case[29], wholesale sales of refined fuel products consist of smaller volumes,[30] usually directly from the suppliers' inland storage facilities, which are delivered by secondary transport (generally by truck) to the clients' premises. The parties are not active in these types of sales. The main competitors in the wholesale sales part of this market are large and well-established suppliers such as ExxonMobil, Shell, Petroplus, Eni, BP and Total, which will thus continue to exert significant competitive pressure on Rosneft post-transaction.

35. Therefore, the proposed transaction does not give rise to competition concerns as regards the market for the supply of heavy fuel oil under any conceivable market definition.

3.2. Vertical relationships

36. Based on the assumption that for the purpose of the competitive assessment, Rosneft and other Russian SOEs active in the oil and gas sector, namely Gazprom, Zarubezhneft and Transneft, are deemed to constitute one single economic unit and their respective market positions should be combined[31], the proposed transaction would give rise to several vertical relationships: (i) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and sale of crude oil and Rosneft's, TNK-BP's and other Russian SOEs' downstream activities in the production and supply of refined

[28] Cf. Fn. 25, above.

[29] COMP/M.4348 - PKN/ MAZEIKIU, para. 10.

[30] Around 20-30 tons at one time.

[31] See paragraph 9 above.

products; (ii) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and sale of natural gas and Gazprom's downstream activities in the supply of natural gas to traders and/or wholesalers; (iii) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and supply of crude oil and Transneft's activities in the transportation of crude oil to the Russian border using the Druzhba pipeline, and (iv) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' activities in the production and supply of diesel fuel and Transneft's activities in the transportation of refined products to a landing point in Latvia using the Polotsk-Ventspils pipeline.

37. As regards (i) the vertical relationship between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and sale of crude oil and Rosneft's, TNK-BP's and other Russian SOEs' downstream activities in the production and supply of refined products, the combined shares of Rosneft, all Russian SOEs active in the oil and gas sector, and TNK-BP would still not exceed 25%, when taking the relevant upstream market for the development, production and sale of crude oil to be worldwide in scope. Accordingly, the proposed transaction does not give rise to any affected market. In addition, these vertical links between Rosneft and the above-mentioned Russian SOEs already existed before the proposed transaction and will not be substantially modified as a consequence of the proposed transaction. Finally, the parties downstream presence is limited (their combined shares are [0-5]% in most cases) and according to the parties, the revenues and profits derived from their downstream products are low compared to the profits made from upstream sales of crude oil; accordingly, the parties submit that adopting a foreclosure strategy would be unprofitable.

38. Should this vertical relationship be assessed under the narrowest possible market definition for the production, development and sale of crude oil, the proposed transaction could oppositely give rise to a vertically affected market (given that the parties' combined share of this potential upstream market would exceed 25% as for Germany and Poland). However, the combination of the activities of Rosneft and TNK-BP does not bring about any change as regards the parties' or any other Russian SOEs' ability or incentives to foreclose competitors. Under this scenario, the parties' activities on the relevant downstream markets for the production and supply of certain refined products are limited to the activities of the Ruhr Oel GmbH refineries in Germany, which are jointly controlled by Rosneft. In the event the merged entity were to decide to divert the supply of crude oil from the refineries that have a direct connection to the Druzhba pipeline to only those refineries operated by Ruhr Oel GmbH, the other refineries would switch to different suppliers and/or alternative means of supply. As explained under 3.1.2.2, these downstream refineries are indeed also capable of being supplied via different means (including alternative pipelines). Also, other crude oil suppliers can and do supply oil through the Druzhba pipeline, meaning that a large number of competitors remain post-merger. The ability to foreclose competitors of the parties is accordingly excluded. Moreover, any profits derived from increased sales at a downstream level are limited given that any input foreclosure would necessarily only benefit the downstream sales within the geographic area that is served by the Ruhr Oel GmbH refineries.

39. As regards (ii) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and sale of natural gas and Gazprom's downstream activities in the supply of natural gas to traders and/or wholesalers, this vertical link similarly already existed before the proposed

transaction. In addition, the combination of the activities of Rosneft and TNK-BP does not bring about any change as regards these Russian SOEs ability or incentives to foreclose competitors of the parties within the territory of the EEA, given that, as explained under 3.1.1.2., Gazprom’s export monopoly precludes TNK-BP from having any activities in the supply of natural gas outside the territory of the Russian Federation.

40. As regards (iii) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' upstream activities in the development, production and supply of crude oil and Transneft's activities in the transportation of crude oil to the Russian border using the Druzhba pipeline, the ability or incentive of Transneft to foreclose oil transportation services to refineries supplied through the Druzhba pipeline can be excluded for the same reasons as explained above as regards the ability or incentive of the merged entity to foreclose the supply of crude oil to those refineries.

41. As regards (iv) the vertical link between Rosneft's, TNK-BP's and other Russian SOEs' activities in the production and supply of diesel fuel and Transneft's activities in the transportation of refined products to a landing point in Latvia using the Polotsk-Ventspils pipeline, this vertical link already existed before the proposed transaction and the combination of the activities of Rosneft and TNK-BP does not bring about any change as regards Transneft's ability or incentives to foreclose competitors of the parties. In particular, while Transneft also has minor activities in the transportation of refined oil products to the EEA (one relatively small pipeline transporting product to Latvia), its share in the transportation of refined products does not exceed 25%, either on a national basis within Latvia or on a wider geographic basis (even if Transneft was considered to control access to this pipeline, which it only partly owns). The parties' combined shares are significantly less than 25% in all markets for the production and supply of refined products, and therefore this vertical relationship does not give rise to any affected market.

42. Therefore, the proposed transaction does not give rise to competition concerns as regards the above-mentioned vertical relationships.

4. CONCLUSION

43. For the above reasons, the 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