EN

Case No COMP/M.7316 - DET NORSKE OLJESELSKAP/ MARATHON OIL NORGE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 10/09/2014

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Markets and cases I: Energy and Environment

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 10/09/2014
C(2014) 6487 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: **Case M.7316 – DET NORSKE OLJESELSKAP/ MARATHON OIL NORGE**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 5 August 2014, the European Commission received the notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Det norske oljeselskap ASA ("Det norske", Norway), ultimately controlled by Aker ASA ("Aker", Norway), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Marathon Oil Norge AS ("Marathon" Norway), by way of purchase of shares[2]. Det norske oljeselskap ASA is designated hereinafter as the "Notifying Party" and together with Marathon Oil Norge AS as "parties to the proposed transaction".

1. THE PARTIES

2. The Notifying Party is active in the exploration, production and wholesale ("E&P") of oil and gas on the Norwegian continental shelf ("NCS"). Aker, which controls the Notifying Party, is active - through its subsidiaries Aker Solutions ASA, Kvaerner

[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 262,12.08.2014, p. 8.

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ASA and Align AS (collectively referred to as the "Aker Group") - in the production and sale of specialised equipment for E&P companies on a global level as well as in the provision of operation and maintenance services for E&P companies with a focus on the North Sea. Aker Solutions provides Engineering, Procurement, Construction and Installation ("EPCI") services, Maintenance, Modification and Operation ("MMO") services as well as subsea light well intervention services, and supplies subsea production systems ("SPS") as well as subsea umbilicals to E&P companies. Kvaerner provides EPCI services to E&P companies. Align provides operation and maintenance services for safety products and systems to E&P companies.

3. Marathon is active in exploration, production and sale of oil and gas on the NCS.

2. THE OPERATION AND THE CONCENTRATION

4. Marathon is currently a wholly-owned subsidiary of Marathon Norway Investment Cooperatief U.A. ("Marathon Group", Norway). The Marathon Group will transfer 100% of the shares in Marathon to the Notifying Party. Following the transaction, the Notifying Party will control Marathon. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

5. The undertakings concerned had in 2013 a combined aggregate world-wide turnover of more than EUR 5 000 million (Aker: EUR 7 886 million, Marathon: EUR 2 392 million).[3] At least two of them had an EU-wide turnover in excess of EUR 250 million (Aker: EUR 778 million, Marathon: EUR 2 391 million), but they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. MARKET DEFINITION

Upstream wholesale of crude oil

6. The Parties are both active in the upstream wholesale of crude oil (development, production and wholesale of crude oil). The Commission has previously considered the wholesale of crude oil as a separate product market,[4] which was generally considered to be EEA-wide.[5] However, with regard to specific 'difficult to reach' customers such as refineries in certain land-locked EEA countries, the

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3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

4 COMP/M.6801 - Rosneft/TNK-BP; COMP/M.2681 - Conoco/Philipps Petroleum; COMP/M.1532 - BP Amoco/Arco.

5 COMP/M.5629 - Normeston/Normeston/Mol/Met JV, para.15; COMP/M.4208 - Petroplus/European Petroleum Holdings, para.10; Case No. IV/85 - Elf/Occidential, para.8.

Commission has previously considered that the geographic scope could be limited to the crude oil supply pipeline such as the Druzhba pipeline.[6] The Notifying Party agrees with the product market definition but argues that the scope of the market should be worldwide. The Commission considers that the exact scope of the geographic market can be left open as the transaction does not give rise to serious doubts under the narrowest plausible market definition.

Upstream wholesale of natural gas

7. The Parties are both active in the upstream wholesale of natural gas (development, production and wholesale of natural gas). The Commission has previously defined a separate product market for the upstream wholesale of natural gas,[7] which was considered to be EEA-wide from a demand-side perspective.[8] However, from a supply-side perspective, the Commission considers that the geographic scope of the market might be limited to the relevant pipelines systems and would therefore be rather regional or national.[9] The Notifying Party agrees with this product definition but argues that the geographic market should be regional comprising the NCS as well as neighbouring Norway and the UK. In any case, the Commission considers that the exact scope of the geographic market can be left open as the transaction does not give rise to serious doubts under the narrowest plausible market definition.

MMO services

8. Aker Solutions and Kvaerner provide so-called MMO services to the E&P industry. MMO services cover maintenance, modification and operation of existing platforms over the entire lifetime of a developed field. The Commission has in the past considered a separate NCS-wide market for MMO services for existing platforms which it considered to be distinct from the market for EPCI contracts for the construction of new platforms.[10] The Notifying Party agrees with the market definition which is retained for the case at hand.

Subsea production systems

9. Aker Solutions produces and sells subsea production system ("SPS") to the E&P industry. The Commission has previously considered that the market for the production and sale of SPS may be further sub-segmented into (1) subsea Christmas trees, which are located on top of every well, ensuring its integrity and enabling the system operator to control the production, (2) subsea manifold, which consists of a system of headers and branched piping that gather or distribute fluids,

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6 COMP/M.6801 Rosneft/TNK-BP (2013).

7 COMP/M.6801 – Rosneft/TNK-BP, para.12; COMP/M.4545, Statoil/Hydro, para.13-16. COMP/M.1532, BP Amoco/Arco, para. 14; COMP/M.1383, Exxon/Mobil, para. 16; COMP/M.3440 – EDP/ENI/GDP, COMP/M.3696 – E.ON/MOL; COMP/39315 – ENI.

8 COMP/M.1383 Exxon/Mobil (1999), para.18; COMP/M.1532 BP-Amoco/Arco (1999) para.16-17.

9 COMP/M.6801 Rosneft/TNK-BP (2013), para.12; COMP/M.4545 Statoil/Hydro (2007), para.13-16.

10 COMP/M.2117 – Aker/Kvaerner, para. 52 et seq. and 62 et seq. (not published, but see IP/00/1425).

and (3) subsea control systems, which provide the means to control and monitor a subsea production system from a remote location.[11] According to previous Commission cases, the geographic markets for these products are at least EEA-wide and potentially worldwide in scope.[12] The Notifying Party agrees with the production market definition but argues that the relevant geographic market should be considered worldwide in scope. In any case, the Commission considers that the exact scope of the geographic market can be left open as the transaction does not give rise to serious doubts under the narrowest plausible market definition.

Subsea umbilicals

10. Aker Solutions provides subsea umbilicals to the E&P industry. There are no previous Commission precedents on the market for subsea umbilicals. According to the Notifying Party, the market for subsea umbilicals can be sub-segmented into (1) subsea power umbilicals, which transmit power from the platform to the electrical applications of the subsea production systems and (2) steel tube umbilicals which transport hydraulic fluids from the platform to the valves of the subsea production system. The Notifying Party submits that the scope of both markets is worldwide, because the main producers sell globally, E&P customers purchase globally and transport costs are low. The market investigation indicated that the market is at least EEA-wide. This is also in line with Commission precedents regarding other equipment for the E&P industry such as the various products for SPS.[13] The Commission therefore considers the markets for subsea power umbilicals and subsea steel umbilicals to be at least EEA-wide and potentially worldwide in scope. The exact scope of the geographic market can be left open since the transaction does not give rise to serious doubts under the narrowest plausible geographic market definition, which is the EEA-wide market.

4.2. COMPETITIVE ASSESSMENT

4.2.1. HORIZONTAL OVERLAPS

Upstream wholesale of crude oil

11. The Parties' combined share in the EEA-wide upstream wholesale market of crude oil is less than 3% in 2013 by volume and value. On a worldwide market the parties' combined share is well below 1 % by value and volume. As regards sales via pipeline networks, only Det norske transports small quantities of its crude oil via pipeline to the UK, Norway and Denmark, none of which is a landlocked country. The majority of Det norske's crude oil and all of Marathon's crude oil is transported via shuttle tanker to its destinations. Moreover, the new entity will face strong competition from a number of large integrated international oil companies such as Statoil, Exxon and Total.

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11 COMP/M.6854 – Cameron/Schlumberger/OneSubsea, para.19/23.

12 COMP/M.6854 – Cameron/Schlumberger/OneSubsea, para. 26-28.

13 COMP/M.6854 – Cameron/Schlumberger/OneSubsea.

Upstream wholesale of natural gas

12. Both Parties are active in the upstream wholesale market of natural gas on the NCS. However, their combined production accounts for less than 1 % of the production on the NCS and even smaller at the North Sea level. As regards national markets, Marathon delivers all of its natural gas production via the Scottish Area Gas Evacuation pipeline ("SAGE") to the UK. DetNorske sells its natural gas directly at the field to large international oil companies such as [Customer names] and has no control over where these companies ship their gas. However, even if all of DetNorske's gas were to be sold to the UK, the Parties' combined sales in 2013 would still account for less than 1% of the UK consumption. Moreover, the new entity would face competition from large integrated gas companies such as Statoil, Shell and Talisman.

Conclusion on horizontal overlaps

13. On the basis of the above, the transaction does not raise serious doubts as to its compatibility with the internal market as a result of the horizontal overlaps.

4.2.2. VERTICAL RELATIONS

14. The transaction leads to vertically affected markets with regard to the activity of the Aker Group on the market for MMO services, the market for subsea production systems ("SPS") and the market for subsea umbilicals on the one hand and the Parties' activity on the upstream wholesale markets for crude oil and natural gas on the other hand.

MMO services / Upstream Wholesale of Crude Oil and Natural Gas

15. The Aker Group (through Aker Solutions) provides MMO services to E&P companies while the Parties are active in the upstream wholesale markets for crude oil and natural gas on the NCS.

16. However, the Commission considers it unlikely that the Aker Group will have the ability to engage in input foreclosure with regard to MMO services to the detriment of the E&P competitors of the new entity. Although the share of the Aker Group in the market for the provision of MMO services on the NCS amounts to [30-40]% in 2013, it faces strong competition from other significant players such as Aibel ([20-30]%) or Apply Sørco ([10-20]%) and there are no indications that these competitors have capacity constraints with regard to their ability to provide MMO services. Furthermore, the Aker Group's customers are themselves large companies which are able and willing to purchase these services outside on a global level, should the Aker Group raise its prices or degrade the quality of its services in any other way. It seems therefore likely that E&P companies would switch to another supplier, if the Aker Group would engage in any foreclosure activities with regard to its MMO services on the NCS. This was also confirmed by the Parties' competitors in the market investigation.

17. Furthermore, the Commission considers it unlikely that the Aker Group will have the incentive to engage in input foreclosure to the detriment of the competitors of the new entity. Such a strategy would not enable the new entity to increase its output by obtaining more exploration licences, because the Norwegian State grants these licences irrespective of the identity of the different suppliers of the license taker. In fact, the E&P companies usually tender out supply contracts only after having obtained a licence for a new field.

18. Moreover, the Commission considers it unlikely that the new entity will have the ability to engage in customer foreclosure to the detriment of the competitors of the Aker Group, because the Parties combined shares in 2013 for the markets for the wholesale of crude oil and natural gas did not exceed 3% for the EEA-wide market for crude oil (by volume and value) and 1% for the regional or national markets for natural gas (by volume and value). Furthermore, the new entity will face competition from large international companies on all of these markets, such as Statoil, Total, ConocoPhilips and others.

Subsea production systems / Upstream Wholesale of Crude Oil and Natural Gas

19. Aker Solutions is active in the sale of SPS, which can be sub-segmented into Christmas trees, manifolds and subsea control systems, while the Parties are active in the markets for development, production and wholesale of crude oil and natural gas.

20. However, the Commission considers it unlikely that the Aker Group will have the ability to engage in input foreclosure with regard to the supply of SPS to the detriment of the E&P competitors of the new entity. As regards Christmas trees, the Aker Group had an EEA market share of [20-30]% by value between 2011 and 2013, but faces competition from companies such as GE Oil and Gas ([30-40]%), FMC Technologies ([20-30]%) or OneSubsea ([10-20]%) and there are no indications that these competitors have capacity constraints with regard to this product. As regards manifolds, the Aker Group had an EEA market share of [40-50]% by value between 2011 and 2013, but faces competition from companies such as FMC Technologies ([30-40]%), OneSubsea ([5-10]%) or GE Oil and Gas ([0-5]%) and there are no indications that these competitors have capacity constraints with regard to this product. As regards subsea control systems, the Aker Group had an EEA market share of [60-70]% by value between 2011 and 2013, but faces competition from companies such as GE Oil and Gas ([10-20]%), FMC Technologies ([10-20]%) or OneSubsea ([5-10]%) and there are no indications that these competitors have capacity constraints with regard to this product. In addition, the market investigation confirmed that the Aker Group's customers are themselves large companies which are able and willing to purchase these services outside on a global level, should the Aker Group engage in input foreclosure (see para. 16).

21. Furthermore, the Commission considers it unlikely that the Aker Group will have the incentive to engage in input foreclosure to the detriment of the competitors of the new entity (see para. 17 above).

22. Moreover, it also seems unlikely that the new entity will have the ability to engage in customer foreclosure to the detriment of the competitors of the Aker Group (see para. 18 above).

Subsea umbilicals / Upstream Wholesale of Crude Oil and Natural Gas

23. The Aker Group (through Aker Solutions) provides subsea power umbilicals and subsea steel umbilicals to E&P companies, while the Parties are active in the markets for development, production and wholesale of crude oil and natural gas.

24. However, the Commission considers it unlikely that the Aker Group will have the ability to engage in input foreclosure with regard to the supply of subsea umbilicals to the detriment of the E&P competitors of the new entity. As regards subsea power umbilicals, the Aker Group [had a market share of less than 5%] in the EEA between 2011 and 2013, because [number of contracts awarded to Aker during this period]. Moreover, on a global market, the Aker Group has a market share of only [0-5]% with regard to this product and faces competition from large international companies such as Nexans ([60-70]%) and Oceaneering ([30-40]%) and there are no indications that these competitors have capacity constraints with regard to this product. As regards subsea steel umbilicals, the Aker Group had an EEA market share of [30-40]% by volume between 2011 and 2013, but faces competition from international companies such as Nexans ([30-40]%), Technip ([10-20]%) and Oceaneering ([5-10]%) and there are no indications that these competitors have capacity constraints with regard to this product. In addition, the market investigation confirmed that Aker Group's customers are themselves large companies which are able and willing to purchase these services outside on a global level, should the Aker Group engage in input foreclosure (see para. 16).

25. Furthermore, the Commission considers it unlikely that the Aker Group will have the incentive to engage in input foreclosure to the detriment of the competitors of the new entity (see para. 17 above).

26. Moreover, the Commission considers it unlikely that the new entity will have the ability to engage in customer foreclosure to the detriment of the competitors of the Aker Group (see para. 18 above).

Conclusion on vertical relations

27. On the basis of the above, the transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical overlaps.

5. CONCLUSION

28. For the above reasons, the European Commission has decided not to oppose the notified operation 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