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***Case No COMP/M.7579 -  
ROYAL DUTCH SHELL  
/ KEELE OY /  
AVIATION FUEL  
SERVICES NORWAY***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/06/2015

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## EUROPEAN COMMISSION

Brussels, 19.6.2015  
C(2015) 4285 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

### To the notifying parties

Dear Sir/Madam,

**Subject: Case M.7579 - ROYAL DUTCH SHELL / KEELE OY / AVIATION FUEL SERVICES NORWAY**  
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 12<sup>th</sup> May 2015, the European Commission received a notification of a proposed concentration pursuant to Article (4) of Council Regulation (EC) No 139/2004 by which Shell Exploration and Production Holding B.V. ("SEPH", the Netherlands), ultimately controlled by Royal Dutch Shell plc ("RDS", England), and St1 Group Oy and St1 Nordic Oy (collectively, "St1", Finland) both controlled by Keele Oy, will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Aviation Fuelling Services Norway AS ("AFSN" or "JV", Norway), currently a 100% subsidiary of SEPH, by way of purchase of

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

shares<sup>3</sup>. (SEPH and St1 are designated hereinafter as the 'notifying parties' and together with AFSN 'parties to the proposed transaction'.)

## **1. THE PARTIES**

- (2) SEPH is part of the Shell Group ("Shell"), the ultimate parent of which is RDS. Shell 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.
- (3) St1 Group Oy and its sister company St1 Nordic Oy (together hereinafter referred to as "St1") are both subsidiaries of Keele Oy. St1 Group Oy has subsidiaries in Sweden consisting of St1's Swedish supply and refining businesses.
- (4) AFSN is a 100% subsidiary of SEPH, consisting of Shell's current aviation fuel marketing business in Norway. It includes Shell's entire Norwegian aviation fuel marketing business, i.e., marketing & sales, physical delivery of fuel at the twelve Norwegian airports where aviation fuel is stored and delivered to airline customers, and ancillary activities, including contracting with carriers based in Norway.

## **2. THE OPERATION**

- (5) Pursuant to the proposed transaction, SEPH will transfer 50% of its participating interest in ASFN to St1. Therefore, following the transaction, ASFN will be owned on a 50/50 basis by SEPH and St1.

## **3. THE CONCENTRATION**

- (6) The proposed transaction entails the acquisition by St1 of a participating interest equal to 50% of the issued share capital in ASFN. The remaining 50% will be owned by SEPH.
- (7) ASFN will be jointly controlled by SEPH and St1 within the meaning of Article 3(1)(b) of the Merger Regulation. According to the shareholders agreement of ASFN, [...].
- (8) ASFN will be fully functional within the meaning of Article 3(4) of the Merger Regulation. ASFN will have its own personnel with regard to sales, purchasing, finance and operations and will outsource to Shell only some technical services. Also, the agreements entered into for this purpose will be on an arm's length basis. ASFN will have a management dedicated to its day-to-day operation. ASFN will contract directly with its own customers. Whereas at present, ASFN purchases jet fuel from [...], ASFN will further develop its own dedicated supply role with responsibility for and expertise in negotiating such supply arrangements on behalf of ASFN. If post-transaction, [...], ASFN will intend to purchase jet fuels from its parents, it would do so on terms negotiated between the parties on an arm's length

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<sup>3</sup> Publication in the Official Journal of the European Union No C 165, 20.05.2015, p. 4.

basis.<sup>4</sup> ASFN will perform its business activities on a lasting basis as no end date has been specified in the agreements.

- (9) Therefore, the transaction constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation.

#### **4. EU DIMENSION**

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> (St1: EUR 6 588 million; Shell: EUR 317 471 million). Each of them has an EU-wide turnover in excess of EUR 250 million (St1: EUR [...] million; Shell: EUR [...] million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

#### **5. MARKET DEFINITION**

- (11) The parties to the transaction are active in the market for into-plane sales of aviation fuel and on the upstream market for ex-refinery sales of aviation fuel. Aviation fuel is a product of the crude oil refining process, which is used to power aircrafts. There are two types of aviation fuels: jet fuel and aviation gasoline (avgas). Jet fuel is a kerosene based fuel used in turbine engined aircraft, typically larger commercial aircrafts. Avgas is a gasoline based fuel used in piston engined aircraft, typically smaller private aircrafts.<sup>6</sup>

##### **5.1. Product market definition**

###### **5.1.1 Ex-refinery sales**

- (12) The Commission has previously found that there is a market for ex-refinery sales of aviation fuel which are sales of large quantities by refineries to wholesalers, resellers or airlines with access to the required transport and storage infrastructure. These sales also include sales to into-plane suppliers.<sup>7</sup> The Commission also concluded that this market includes both the sales of avgas and the sales of jet fuel.<sup>8</sup>
- (13) The Parties agree that ex-refinery aviation fuel sales form part of a separate market from the into-plane aviation fuel sales.
- (14) In the present case, the Commission considers that ex-refinery sales of aviation fuel constitute a separate market which includes avgas and jet fuel.

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<sup>4</sup> Form CO, para 34.

<sup>5</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>6</sup> Form CO, paragraph 65.

<sup>7</sup> COMP/M.7387 – BP/Statoil Fuel and Retail Aviation; COMP/M.5880 – Shell/Topaz /JV; COMP/M.5422 – Statoilhydro /St1/St1 Avifuels; COMP/M.1383 – Exxon/Mobil.

<sup>8</sup> COMP/M.7387 – BP/Statoil Fuel and Retail Aviation.

### 5.1.2 *Into-plane sales of aviation fuel*

- (15) The Commission has previously found that there is a market for into-plane supply of aviation fuel, which consists of the supply of aviation fuel at individual airports under contracts between into-plane suppliers and airlines. In that market, into-plane suppliers supply the aviation fuel pursuant to arrangements with servicing companies (of which the into-plane fuel supplier may or may not be a member/owner) that operate the airport fuelling infrastructure (storage, hydrant pipelines) and perform actual into-plane fuelling services with dispenser vehicles or fuelling trucks to the aircrafts.<sup>9</sup> The Commission has left open the question whether this market should be further segmented between the sales of avgas and jet fuel.<sup>10</sup>
- (16) The Parties agree that a distinction should be made between ex-refinery and into-plane aviation fuel sales. Activities with regard to into-plane sales of aviation fuel can be considered as ‘downstream’ to Shell’s activities on the market for ex-refinery fuel sales.
- (17) In the present case, the Commission considers that into-plane supply of aviation fuel constitutes a separate product market. As regards the potential distinction of aviation fuel between avgas and jet fuel, the Commission considers that this question can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition retained.

## 5.2. ***Geographic market definition***

### 5.2.1 *Ex-refinery sales*

- (18) In previous decisions, the Commission has considered that ex-refinery aviation fuel sales take place on an EEA/European or Western European geographic market but also considered that the market could be narrower, possibly encompassing only the Scandinavian countries.<sup>11</sup>
- (19) The Notifying Parties submit that the scope of the relevant geographic market for ex-refinery aviation fuel sales should be regarded as encompassing the EEA as aviation fuel may with relative ease be transported over vast distances and ex-refinery aviation fuel sales are generally provided, from a supply perspective, by many of the same large providers that are active throughout the EEA.
- (20) In the present case, the geographic market definition for into-plane aviation fuel can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to any plausible geographic market definition.

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<sup>9</sup> COMP/M.7387 – BP/Statoil Fuel and Retail Aviation; COMP/M.3110 – OMV/BP.

<sup>10</sup> COMP/M.7387 – BP/Statoil Fuel and Retail Aviation.

<sup>11</sup> COMP/M.7387 – BP/Statoil Fuel and Retail Aviation; COMP/M.5880 – Shell/Topaz/JV; COMP/M.5005 – Energia/ExxonMobil Iberia;; COMP/M.3291 – Preem/Skandinaviska Raffinaderim; COMP/M.1628 – TotalFina/Elf; COMP/M.1383 – Exxon/Mobil.

### 5.2.2 *Into-plane sales of aviation fuel*

- (21) The Commission has previously taken the view that the scope of the geographic market for into-plane supply is limited to a specific airport, due to the airport-specific supply contracts and fuelling infrastructure specific to each airport.<sup>12</sup>
- (22) The Parties agree with the above mentioned definition. However, in the present case, the geographic market definition for into-plane aviation fuel can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to any plausible geographic definition.

## 6. **COMPETITIVE ASSESSMENT**

- (23) According to the Notifying Parties, the proposed transaction does not lead to any horizontally affected market. Both SEPH and St1 are active on the market for into-plane sales of aviation fuel but they do not compete on the same airports. In addition, while the parent company of SEPH, that is Shell, and St1 are both currently active in the upstream ex-refinery supply of aviation fuel to into-plane marketing companies, the JV will have no activities at that level of the market as it will be active in retail sales of aviation fuel at airports only.
- (24) The transaction gives rise to vertically affected markets between the upstream ex-refinery sales of aviation fuel by St1 and Shell, and the downstream into-plane aviation fuel supply of ASFN. With regard to Shell and St1's activities upstream ex-refinery at EEA level, the combined market shares of the Notifying Parties is very limited and in any event below [5-10]% under any plausible market definition. Shell and St1 have at global level a market share of [0-5]% and less than 1% respectively whereas at Scandinavian level, (i.e. the narrowest possible geographic market), their market shares amount to [5-10]% and [0-5]% respectively.
- (25) On the downstream market, if a market for into-plane supply of aviation fuel (including avgas and jet fuel) were considered, ASFN has market shares in excess of 30% in 9 airports in Norway, as detailed in the following table 1:

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<sup>12</sup> COMP/M.5880 – SHELL / TOPAZ / JV; COMP/M.5005 – Energia/ExxonMobil Iberia; COMP/M.3110 – OMV/BP; COMP/M.1628 – TotalFina/Elf; COMP/M.1383 – Exxon/Mobil.

**Table 1**

	<b>Estimated Total sales 2013 ('000 USD)</b>	<b>Shell sales value 2013 ('000 USD)</b>	<b>Shell's estimated market share 2013</b>	<b>Estimated Total sales value 2014 ('000 USD)</b>	<b>Shell sales value 2014 ('000 USD)</b>	<b>Shell's estimated market share 2014</b>
Bergen-Flesland (BGO)	[...]	[...]	[20-30] %	[...]	[...]	[30-40] %
Tromsø (TOS)	[...]	[...]	[50-60] %	[...]	[...]	[60-70] %
Stavanger (SVG)	[...]	[...]	[20-30] %	[...]	[...]	[20-30] %
Bodø (BOO)	[...]	[...]	[0-5] %	[...]	[...]	[0-5] %
Sandefjord-Torp (TRF)	[...]	[...]	[20-30] %	[...]	[...]	[20-30] %
Rygge (RYG)	[...]	[...]	[60-70] %	[...]	[...]	[60-70] %
Trondheim (TRD)	[...]	[...]	[40-50] %	[...]	[...]	[40-50] %
Oslo Gardermoen (OSL)	[...]	[...]	[20-30] %	[...]	[...]	[30-40] %
Ålesund (AES)	[...]	[...]	[90-100] %	[...]	[...]	[90-100] %
Molde Årø (MOL)	[...]	[...]	[90-100] %	[...]	[...]	[90-100] %
Kristiansand (KRS)	[...]	[...]	[90-100] %	[...]	[...]	[90-100] %
Kristiansund Kvernberget (KSU)	[...]	[...]	[90-100] %	[...]	[...]	[90-100] %
<b>Total</b>	<b>1 251 210</b>	[...]	<b>[30-40] %</b>	<b>1 232 441</b>	[...]	<b>[30-40] %</b>

- (26) AFSN has virtually the same market shares at each of those airports if only jet fuel sales (which represent the vast majority of aviation fuel) were considered. As for avgas' sales, the Notifying Parties could not estimate AFSN's market share at each Norwegian airport (except for the four airports where AFSN is the only supplier of aviation fuel, where AFSN has 100% market share).<sup>13</sup> In any event, as will be described below, regardless of AFSN's market share on any of the downstream markets (that is any of the airports), the transaction will not give rise to any competition concerns.
- (27) The Notifying Parties claim that the transaction will not lead to any vertical competitive concerns. In particular, the Notifying Parties claim that the merged entity will have no ability to engage in input foreclosure because currently none of AFSN's competitors at Norwegian airports source their fuel from St1's refinery in Gothenburg, Sweden. The Notifying Parties also claim that the transaction will not give rise to any sort of customer foreclosure.

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<sup>13</sup> Due to the small volumes of avgas sold, Shell has no visibility over total demand at airports or whether (and if so, how much) competitors sell avgas.

- (28) The Commission takes the view that the transaction will not allow the Notifying Parties to engage in any foreclosure behaviour. The arguments presented below apply similarly whether the Commission considers markets for into-plane supply for aviation fuel, jet fuel or avgas.
- (29) As to input foreclosure which would raise the costs at which competitors can operate on a downstream market, the Commission considers that the proposed transaction does not give rise to such concerns. St1 does not currently supply any aviation fuel (whether jet fuel or avgas) to Norwegian airports, where AFSN is active. AFSN's competitors active in Norwegian airports do not rely at all on supplies from St1 and will continue to have access to alternative sources of supply, as the combined market share of Shell and St1 is below 10% and St1's share at ex-refinery level is extremely limited and in any case below [0-5]% under the narrowest plausible market definition.
- (30) As to customer foreclosure, which would lower the expected revenue streams of upstream competitors, the Commission considers that the proposed transaction does not give rise to any concerns.
- (31) First, St1 currently does not supply jet fuel to Norwegian airports.
- (32) Second, in all but four Norwegian airports where AFSN is active, AFSN's market share in the into-plane supply of aviation fuel ranges between [30-40]% and [60-70]%. Assuming that AFSN would in the future only purchase aviation fuel from its parents, upstream competitors would still be able to sell to AFSN's competitors active at those airports.<sup>14</sup>
- (33) Third, AFSN's current purchases exceed significantly St1's and Shell's ex-refinery sales in Scandinavia. It is therefore very unlikely that Shell's and St1's sales in the Scandinavian region would be able to meet AFSN's demand.
- (34) Finally, ex-refinery markets are at least Scandinavian-wide, if not EEA-wide and therefore ST1's and Shell's competitors will have sufficient other airports to supply aviation fuel to.
- (35) On the basis of the above and all available evidence the concentration therefore does not give rise to serious doubts in relation to the vertically affected markets of ex-refinery sales of aviation fuel and into-plane supply of aviation fuel at various Norwegian airports.

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<sup>14</sup> Considering market shares only in the into-plane supply of aviation fuel is sufficient here given that, at the ex-refinery level jet fuel and avgas belong to the same market.



**7. CONCLUSION**

- (36) 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 and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*

Věra JOUROVÁ

*Member of the Commission*