

EN

***Case No COMP/M.7616 - DCC/ DLG DANISH ENERGY
BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/06/2015

***In electronic form on the EUR-Lex website under
document number 32015M7616***



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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 23.6.2015
C(2015) 4420 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.7616 – DCC/ DLG DANISH ENERGY BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

- (1) On 21 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 the undertaking DCC Holding A/S ("DCC Energy", Denmark) controlled by DCC Plc ("DCC", Ireland) indirectly acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Danish energy business of the undertaking DLG Service A/S (the "DLG Danish Energy Business", Denmark) controlled by DLG Group ("DLG", Denmark)³. DCC Energy is designated hereinafter as 'Notifying Party' and together with the DLG Danish energy business as the 'parties to the proposed transaction' or the 'Parties'.

1. THE PARTIES

- (2) DCC entered the Danish energy market in 2009 through the acquisition of the majority of Shell's Danish commercial fuels activities. In connection with the 2009

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 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C 177, 30.05.2015, p. 17.

acquisition, DCC Energy was appointed as A/S Dansk Shell's sole distributor of Shell-branded commercial fuels to Danish customers – save for certain named customers reserved to A/S Dansk Shell itself and for customers in the agricultural segment which are reserved to the DLG Danish Energy Business (see next paragraph). Although the majority of DCC Energy's business is accounted for by sales of fuel products purchased from A/S Dansk Shell, it is also active in the unrelated sale of bio-fuels (wood pellets) and lubricants.

- (3) The DLG Danish Energy Business is the currently wholly-owned Danish energy business of the DLG Group. Since 1 January 2010, the DLG Danish Energy Business has been appointed as A/S Dansk Shell's sole distributor of Shell-branded commercial fuels to Danish customers in the agricultural segment which constitutes its core customer base for energy products.
- (4) DCC Energy and the DLG Danish Energy Business are both active in the sales of gasoline, diesel, heating oil and fuel oil in Denmark, primarily at the non-retail level. Moreover, both Parties are active in the sales of bio-fuels (wood pellets) and lubricants. DCC Energy is furthermore active in the sales of marine gas oil and natural gas whereas DLG Service is not active in the sales of any of these products. Conversely, the DLG Danish Energy Business has sales of coal and electricity whereas DCC does not sell these products.
- (5) The Parties indicate that their respective contractual relationships with A/S Dansk Shell will not be affected by the proposed transaction and that they will continue to act as exclusive resellers of Shell-branded fuel products in Denmark – save for certain named customers which A/S Dansk Shell has reserved to itself.

2. THE OPERATION

- (6) The proposed transaction involves the acquisition of sole control of the existing Danish energy business of the DLG Group by DCC, via its subsidiary DCC Energy. The strategic and economic rationale for the Transaction is to create synergies by combining the Danish energy businesses of the Parties in a joint venture company (the "Combined Entity"). In return for a [less than 50] per cent non-controlling shareholding, the DLG Group will contribute its entire Danish energy business to the Combined Entity which will be controlled and managed by DCC.

3. THE CONCENTRATION

- (7) By means of the proposed transaction, DCC will indirectly acquire the majority ([more than 50] per cent) of the shares and voting rights in the Combined Entity and, thereby, in the DLG Danish Energy Business. Pursuant to the shareholders agreement entered into between the Parties in relation to the Combined Entity (the "SHA"), DCC will moreover have the right to appoint three out of five members of the board of directors thereof. Given that simple majority voting applies both at the level of the general meeting as well as at the level of the board of directors of the Combined Entity, while the presence of the DLG Group is not required for reaching a quorum at either level, DCC will have the power to unilaterally decide on the

strategic commercial behaviour thereof. Finally, DCC will be responsible for managing the Combined Entity on a day-to-day basis.⁴

- (8) At the same time, the veto rights that the DLG Group will hold as a result of its retained [less than 50] per cent shareholding in the Combined Entity do not go beyond what is normally accorded to minority shareholders in order to protect their financial interests as investors in joint ventures.⁵ Pursuant to the SHA, the only veto right that the DLG Group will namely hold over any strategic issue relates to the existing high-level business plan of the Combined Entity and is limited to [...]. Given that the Combined Entity will continue the activities of two already existing wholesale businesses that operate in a relatively low-technology sector not characterized by significant, regular investments, the veto right over significant changes to the high-level business plan cannot be considered to confer joint control over the Combined Entity upon the DLG Group.
- (9) In light of the foregoing, the Commission considers that DCC acquires sole control over the DLG Danish Energy Business post-completion of the proposed transaction within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ [DCC: EUR 13 321 million; DLG Danish Energy Business: EUR [...] million]. Each of them has an EU-wide turnover in excess of EUR 250 million [DCC: EUR [...] million; DLG Danish Energy Business: 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 notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

5. MARKET DEFINITION

- (11) The Parties' activities overlap in relation to the non-retail sale in Denmark of (i) gasoline, (ii) diesel, (iii) heating oil, and (iv) fuel oil (HFO). The Parties are also active in Denmark in (v) the retail sale of heating oil, (vi) the sale of wood pellets, and (vii) the sale of lubricants.
- (12) Regarding the supply of refined oil products the Commission has previously considered three levels of the market: ex-refinery sales, non-retail sales and retail

⁴ Form CO, annex 5.4(A), p. 6.

⁵ These veto rights include: [...].

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

sales.⁷ The Parties are not active at the ex-refinery level of the market and only to a very limited extent at the retail level.⁸

5.1. Non retail sale of refined fuel products

- (13) At the non-retail level, the Commission has previously concluded that each refined fuel product constitutes a distinct relevant product market.⁹ In the case at hand, the Commission similarly considers four distinct product markets at the non-retail level, i.e. the sales of (i) gasoline, (ii) diesel, (iii) heating oil, and (iv) fuel oil (HFO). The Notifying Party however submits that the market should be defined as one single product market without a further distinction either by non-retail/retail sales or by the type of fuel product.
- (14) In the case of diesel sold at this level, the Commission has previously considered a potential sub-segmentation of the non-retail market between on-road and off-road diesel – without finally concluding on the issue.¹⁰ The Notifying Party considers that the relevant market for the assessment of the Combined Entity's diesel sales activities is the Danish market for the non-retail sale of diesel encompassing all types of diesel products, and that no distinction should be made between on-road and off-road diesel. Notwithstanding, the Notifying Party notes that three different diesel products are currently sold at the non-retail level in Denmark at different price levels and for different end-uses: (i) B7 diesel, which contains seven per cent biodiesel and is therefore suited for on-road use (i.e. transportation) under Danish law; (ii) uncoloured B0 diesel, which does not contain any biodiesel and is therefore only suited for non-road use (i.e. as a motor fuel for non-road machinery), and; (iii) coloured B0 diesel, which is subject to a special tax regime in Denmark – an exemption from energy levies – pursuant to which it can only be used for forestry and agricultural purposes.
- (15) As regards the geographic scope of these markets, the most recent Commission decisions pointed towards markets that are likely to be at least national in scope,

⁷ COMP/M.6801 Rosneft / TNK-BP, of 8 March 2013; COMP/M.6463 Marquard & Bahls, of 19 March 2012; COMP/M.6261 North Sea / Argos Group / JV, of 27 September 2011; COMP/M.6151 Petrochina / Ineos / JV, of 13 May 2011; COMP/M4348 PKN/Mazeikiu, of 7 November 2006, para 7.

⁸ DLG is present on the market for retail sales of motor fuels with one single petrol station in Northern Jutland. DCC is not present on this market.

⁹ See COMP/M.3291 Preem/Skandinaviska Raffinaderi (2003); COMP/M.3375 Statoil / SDS (2004); COMP/M.3543 PKN Orlen / Unipetrol (2005); COMP/M.3516 Repsol / Shell Portugal; COMP/M.4208 Petroplus / European Petroleum Holdings (2006); COMP/M.4545 Statoil / Hydro (2007); COMP/M.5005 Galp Energia / Exxonmobil Iberia (2008); COMP/M.5169 Galp Energia Espana / Agip Espana (2008).

¹⁰ See COMP/M.6935 – Argos / Sopetral

and possibly even Scandinavia-wide in scope in the case of Denmark. The exact delineation of the geographic scope of these markets was however left open.¹¹

- (16) In the case at hand, the exact delineation of the relevant product and geographic markets can however be left open as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

5.2. Retail sale of heating oil

- (17) The Commission has previously distinguished between non-retail sales of heating oil and retail sales of heating oil.¹² However, in the case of heating oil sold in Denmark, the distinction between retail and non-retail and the exact boundary between the two segments is not straightforward. Contrary to gasoline and diesel, the 'retail' sales of heating oil are not carried out through service stations. Both non-retail and retail sales of heating oil are done by truck delivery directly at end-customers' premises, regardless of whether industrial/commercial customers or domestic consumers are concerned. The complex structure of the market for the sale of heating oil is illustrated by the fact that a company like A/S Dansk Shell sells heating oil both to large resellers (DCC Energy and the DLG Danish Energy Business) as well as to large business customers, whereas DCC and the DLG Danish Energy Business sell heating oil both to commercial and domestic customers – with the customers of the DLG Danish Energy Business either being qualified as business customers or domestic customers, depending on the volume they off-take, as the latter's reporting systems do not provide insight into whether the heating oil in question is used for private or commercial purposes.

- (18) In any event, the Commission considers that for the purpose of assessing the proposed transaction, the question of whether non-retail and retail sales of heating oil constitute separate product markets can be left open, as the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

- (19) Regarding the geographic scope of this market, the Commission has previously considered it to be at least national in scope. However, the exact geographic scope can be left open, as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

5.3. Sales of bio-fuels (wood pellets)

- (20) The Parties are both active in the sales of wood pellets that are used as a bio-fuel.
- (21) The Commission has previously considered distinguishing separate relevant product markets involving the sale of wood pellets based on (i) the type of customer/retail channel (large, medium and small), (ii) the type of wood pellet sold

¹¹ COMP/M.3291 Preem/Skandinaviska Raffinaderi (2003); COMP/M.3375 Statoil / SDS (2004); COMP/M.3543 PKN Orlen / Unipetrol (2005); COMP/M.3516 Repsol / Shell Portugal; COMP/M.4208 Petroplus / European Petroleum Holdings (2006); COMP/M.4545 Statoil / Hydro (2007); COMP/M.5005 Galp Energia / ExxonMobil Iberia (2008); COMP/M.5846 Shell / Cosan / JV (2011).

¹² COMP/M.6167 RWA / OMV Warme (2011); COMP/M.5637 Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings (2010); COMP/M.5796 Eni / Mobil Oil Austria (2010).

(premium versus non-premium) as well as on (ii) the size of the burner used by the relevant customer (distinguishing capacities below 25 kW, between 25 kW and 2 MW and above 2 MW). The Commission however ultimately considered that the distinction based on the type of wood pellets and based on the size of the customers' burners are the relevant ones to take into account.

- (22) The Notifying Party takes the view that the market for the sale of wood pellets should not be further segmented based on the size of the burner nor on the basis of the type of wood pellets because irrespective of their quality or size, they fulfil the same function – energy production in wood pellet burners.
- (23) As regards the geographic scope of the market for the sale of wood pellets, the Commission previously considered that there are indications for the existence of a market that is at least national, and possibly wider, in scope.¹³ The precise delineation (regional, national or local) was, however, left open.¹⁴
- (24) Given that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible alternative market definition, the precise product and geographic market definitions can however be left open.

6. COMPETITIVE ASSESSMENT

- (25) As can be seen from the table, the proposed transaction gives rise to affected markets in relation to the non-retail and retail sale of heating oil, and certain possible sub-segments of the respective markets for the non-retail sale of diesel and the sale of wood pellets.

¹³ COMP/M.7185 - Agroenergi / Neova Pellets / JV.

¹⁴ The Parties confirm that their individual and combined shares at a local level in Denmark, although they consider such a market unlikely to exist given the very small size of the country, would not be materially different from their shares at national level in Denmark.

Table 1 – market shares of the Parties in the various plausible affected markets, 2014 (volume)¹⁵

	Denmark		
	DCC	DLG	Combined
Non-retail diesel	[0-5]%	[5-10]%	[10-20]%
<i>Non-retail coloured B0 diesel</i>	[0-5]%	[30-40]%	[30-40]%
<i>Non-retail uncoloured B0 diesel</i>	[20-30]%	[0-5]%	[20-30]%
<i>Non-retail B7 diesel</i>	[0-5]%	[0-5]%	[0-5]%
<i>Non-retail uncoloured B0 & B7 diesel</i>	[0-5]%	[0-5]%	[5-10]%
Non-retail and retail heating oil	[10-20]%	[5-10]%	[20-30]%
Non-retail heating oil	[10-20]%	[5-10]%	[20-30]%
Retail heating oil	[20-30]%	[0-5]%	[20-30]%
Wood pellets	[0-5]%	[5-10]%	[5-10]%
<i>Premium wood pellets</i>	[0-5]%	[10-20]%	[10-20]%
<i>Non-premium wood pellets</i>	[0-5]%	[0-5]%	[0-5]%
<i>Wood pellets – burner <25 kW</i>	[0-5]%	[10-20]%	[20-30]%
<i>Wood pellets – burner 25 kW-2 MW</i>	[0-5]%	[10-20]%	[10-20]%
<i>Wood pellets – burner >2 MW</i>	[0-5]%	[0-5]%	[0-5]%

6.1. Sale of refined oil products

- (26) The Commission considers at the outset that the proposed transaction is unlikely to reduce the intensity of competition in any of the markets in which the Parties' activities overlap, as they target very different customer groups. Indeed, pursuant to their respective supply and distribution agreements with A/S Dansk Shell which cover the bulk of their respective businesses (i.e. heating oil, diesel, fuel oil and gasoline), the Parties are subject to customary active sales restrictions in relation to the respective exclusive customer groups of A/S Dansk Shell, the DLG Danish Energy Business and DCC Energy.¹⁶ Accordingly, the DLG Danish Energy Business has focused its efforts on building and maintaining a strong customer base among the agricultural customers which the DLG Group as a farmer-owned purchase and supply organisation focuses on. DCC Energy, in turn, cannot actively market its Shell-branded fuel products to agricultural customers and accordingly

¹⁵ The Parties note that all market share data for refined fuel products have been provided on the basis of EOF data, which excludes any imports of these products into Denmark by non-EOF members. (EOF stands for *Energi og Olieforum* – the Danish Oil Industry Association). The Parties accordingly estimate that the total market is five to ten per cent larger than referenced here, which would mean that their respective market share could be overstated.

¹⁶ Cf. Form CO, annexes 6.3(A) and 6.3(B) – DCC and DLG commercial fuels branded distributor agreements with Shell, respective clauses 2.4 (DCC) and 2.4 of annex 2 (DLG).

has limited sales of commercial fuels to this customer group. Instead, DCC Energy focuses its marketing effort on, and sells fuel products to, other types of industrial and commercial customers, as well as service stations and independent resellers (in the case of gasoline and diesel) and domestic consumers (in the case of heating oil). The DLG Danish Energy Business does not have sales to service stations or independent small resellers and has only very limited sales of heating oil to domestic consumers.

- (27) The Parties' fundamentally different focus becomes apparent when assessing their positions on the respective plausible markets for the non-retail sale of coloured B0 diesel and for the non-retail sale of uncoloured B0 diesel. As ninety-five per cent of total sales of coloured B0 diesel are made to agricultural customers, which are reserved to the DLG Danish Energy Business under its supply agreement with A/S Dansk Shell, the former has a relatively strong position in this market. Oppositely, in relation to sales of uncoloured B0 diesel, which are primarily made to industrial companies (construction), DCC Energy is a much more significant player than the DLG Danish Energy Business.
- (28) In addition, as can be seen from the market share table below, the proposed transaction involves limited increments in the Parties' market shares in all affected markets and it is accordingly unlikely to result in a significant loss of competition, also taking into account the aforementioned difference in the respective customer groups targeted by the Parties.
- (29) In those cases where the proposed transaction, notwithstanding the limited increment involved, gives rise to an affected market, the Parties will, according to information provided by them, furthermore continue to face competitive pressure from several strong competitors.
- (30) In relation to both the non-retail and retail sale of heating oil, the Parties will continue to face at least four strong competitors with a nation-wide presence, each having a share of the market that significantly exceeds that of the target, the DLG Danish Energy Business: Statoil – [20-30]%; OK – [20-30]%; Q8: [10-20]%; Uno-X: [10-20]% (the same shares apply to both sales channels). Furthermore, one of the parties' main competitors indicated during the Commission's market investigation that, in addition, Shell constitutes one of the main players (alongside OK and Statoil) on the market involving the sale of heating oil to business end-customers, for commercial use.¹⁷
- (31) In relation to the sale of coloured B0 diesel, the Parties will continue to face at least five strong competitors, each having a nation-wide presence as well as a market share exceeding that of DCC: Danish Agro: [20-30]%; OK: [10-20]%; Q8: [10-20]%; Uno-X: [5-10]%; Statoil Fuel & Retail: [5-10]%. This assessment applies equally to the sale of uncoloured B0 diesel: Statoil Fuel & Retail: [20-30]%; Uno-X: [20-30]%; OK: [10-20]%; Q8: [10-20]%; Danish Agro: [0-5]%.
- (32) What is more, in relation to the various markets involving the non-retail sale of refined fuel products, it is noted that the existence of significant cross-border trade has previously led the Commission to consider that Denmark forms part of a wider

¹⁷ Minutes of a conference call between the Commission's services and a competitor of 29 May 2015.

Scandinavia-wide market.¹⁸ Given that the DLG Danish Energy Business is exclusively active within Denmark, its shares of possible Scandinavia-wide markets for the non-retail sale of refined fuel products would be significantly smaller. The potential import of refined fuel products from Denmark's neighbouring countries therefore constitutes an additional competitive constraint that the Parties will continue to face post implementation of the proposed transaction.

- (33) Finally, during the market investigation in relation to the markets for the non-retail and retail sale of heating oil where the proposed transaction would bring about the most significant – but still limited – increment in the Parties' shares, the Parties' customers and competitors that were contacted did not raise any concern in relation to the proposed transaction.

6.2. Sales of bio-fuels (wood pellets)

- (34) As mentioned above, the fundamentally different customer focus of the Parties means that the proposed transaction is unlikely to reduce the intensity of competition, including in the market for the sale of wood pellets to customers having a burner size below 25 kW.
- (35) What is more, the incremental change in the Parties' share of this market that is brought about by the proposed transaction is highly limited, amounting to, at most, only [0-5]%.
- (36) Finally, the Parties will similarly continue to face at least four strong competitors in relation to the sale of wood pellets: Neova: [10-20]%; Danish Agro: [10-20]%; Verdo: [5-10]%; and SydJysk Stoker: [5-10]%.

6.3. Conclusion on competitive assessment

- (37) In light of all of the foregoing, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of non-coordinated horizontal effects arising in any of the affected markets involving the sale of refined fuel products and the sale of wood pellets in Denmark.

¹⁸ M.3291Preem/Skandinaviska Raffinaderi (2003).

7. CONCLUSION

- (38) 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),
Margrethe VESTAGER
Member of the Commission*