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***Case No COMP/M.7631 - ROYAL DUTCH SHELL/
BG GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/09/2015

***In electronic form on the EUR-Lex website under
document number 32015M7631***



Brussels, 2.9.2015
C(2015) 6181 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case M.7631 – Royal Dutch Shell/ BG Group
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 29 July 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Royal Dutch Shell plc ('Shell', UK/Netherlands), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of BG Group plc ('BG Group', UK) by way of a public bid for all the issued and to be issued share capital of BG Group³. Shell is hereinafter referred to as the "Notifying Party" and Shell and BG are collectively referred to as the "Parties".

1. THE PARTIES

(2) Shell is a global group of energy and petrochemical companies. Shell is listed on the London, Amsterdam and New York Stock Exchanges. Shell companies have operations in more than 70 countries and territories with businesses including (i) oil and gas exploration, production and marketing; (ii) manufacturing, marketing and shipping of oil products and chemicals, and (iii) renewable energy products.

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 256, 05.08.2015, p. 13.

- (3) BG Group resulted from the demerger of British Gas (the other, downstream part being Centrica) and is currently listed on the London Stock Exchange. BG Group has interests in over 20 countries on five continents. It has two principal business areas: (i) the Upstream Gas business segment, which covers exploration and production activities plus liquefaction operations associated with integrated liquefied natural gas ("LNG") projects, and (ii) the LNG Shipping & Marketing business, which purchases, transports (by vessel), markets and sells LNG and which is responsible for BG Group's regasification facilities. BG Group is also active in the production, development and upstream wholesale supply of crude oil as well as in the financial trading and transportation thereof – although to a limited extent.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 8 April 2015, Shell announced its intention to acquire the entire issued and to be issued share capital of BG Group. By means of this public bid under the UK City Code on Takeovers, Shell will acquire sole control of BG Group and the proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [Shell: EUR 480 716 million; BG Group: EUR 14 707 million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Shell: EUR [...] million; BG Group: 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.

4. RELEVANT MARKETS

- (6) The Parties' activities overlap at a horizontal and vertical level in relation to the upstream and downstream wholesale stages of the respective oil and gas value chains.
- (7) In particular, the proposed transaction will give rise to horizontal overlaps with regard to the exploration for oil & gas; the development, production and upstream wholesale supply of crude oil; the financial trading of crude oil; the development, production and upstream wholesale supply of natural gas; the liquefaction and upstream wholesale supply of LNG; the transportation of LNG by vessel; the trading of natural gas at natural gas trading hubs, and the off-shore transportation and processing of each of oil and gas.
- (8) The proposed transaction will give rise to vertical relationships between the Parties' oil & gas production and transportation & processing activities; between their crude oil supply and refining activities; between their activities in the upstream and downstream wholesale supply of natural gas, and; between their activities in the liquefaction and wholesale supply of natural gas/LNG.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (9) Although not necessarily giving rise to affected markets as defined in Commission Implementing Regulation (EC) No 139/2004,⁵ out of the aforementioned horizontally and vertically overlapping activities, the Commission will address the following markets in detail, given that, for example, the proposed transaction would lead to market leadership of the merged entity notwithstanding the latter's limited market share: (i) exploration for oil and gas reserves; (ii) development, production and upstream wholesale supply of natural gas; (iii) liquefaction and upstream wholesale supply of LNG; (iv) off-shore transportation of gas, and (v) processing of gas.

4.1. Exploration for oil and gas reserves

- (10) The Commission has previously considered that a separate relevant product market could exist for the exploration of oil & gas reserves⁶, which it considered to be worldwide in scope.
- (11) The Notifying Party takes the view that if a separate relevant product market for the exploration of crude oil and natural gas exists, the Parties' position on this market would only really be useful as a proxy for their expected future oil and gas production levels. The Notifying Party considers that this market, were it to exist, is worldwide in scope.
- (12) On the basis of the results of the market investigation carried out in the present matter, the Commission however considers that the existence of a separate relevant product market for the exploration of oil & gas reserves cannot be ruled out. Indeed, a majority of the Parties' competitors have stated that they, at least occasionally, engage in the onward sale of (part of) certain exploration licenses to third parties (i.e. subsequent to the conclusion of the initial bidding procedure or bilateral negotiations with the licensor by which the license in question was awarded), for example as part of a portfolio optimization exercise or to reduce risk by diluting their shareholding in certain licenses.⁷
- (13) The Commission has therefore assessed the Parties' position on this possible market in the competitive assessment below.

4.2. Development, production and upstream wholesale supply of natural gas

- (14) The Commission has previously considered that a separate relevant product market could exist for the development, production and upstream wholesale supply of natural gas to large importers/wholesalers⁸. In the Commission's most recent decision-making practice, the geographic market was considered to be national or, potentially, slightly

⁵ As amended by Commission Implementing Regulation (EU) No 1269/2013, OJ L 336 of 14.12.2013, p.1. See Annex I, point 6.3.

⁶ COMP/M.6910 – *Gazprom / Wintershall / Target Companies* (2013); COMP/M.6801 – *Rosneft / TNK-BP* (2013); COMP/M.5585 – *Centrica / Venture Production* (2009); COMP/M.4545 – *Statoil / Hydro* (2007).

⁷ Reply to Questionnaire 2 – Competitors, question 4.

⁸ COMP/M.6910 – *Gazprom / Wintershall / Target Companies* (2013); COMP/M.6801 – *Rosneft / TNK-BP* (2013); COMP/M.5585 – *Centrica / Venture Production* (2009); COMP/M.4545 – *Statoil / Hydro* (2007).

wider in scope (given the increasing convergence of prices across gas trading hubs in North-West Europe).⁹

- (15) The Notifying Party considers that one overall market for the wholesale supply of natural gas indeed exists, which would encompass gas produced in the EEA as well as Algerian, Russian and Libyan gas imports into the EEA.

4.2.1. *LNG-related markets*

- (16) Both Parties currently have significant activities in the LNG-sphere, including liquefaction, shipping and wholesale supply. The Commission has therefore assessed in detail whether the Parties' various LNG-related activities form part of plausible separate relevant product markets.

- (17) LNG constitutes natural gas in liquid form, which is achieved by cooling it to approximately -162° Celsius. LNG is easier to store and to transport, as it takes up to 600 times less volume than natural gas in a gaseous state.

- (18) The Notifying Party explains that the life cycle of LNG encompasses the following stages: (i) exploration for oil & gas; (ii) production of natural gas; (iii) liquefaction of natural gas into LNG; (iv) wholesale supply of LNG; (v) LNG shipping, and; (vi) regasification of LNG to allow entry into the natural gas grid at the port of arrival of the LNG in question.

- (19) Although the Parties are active across all stages of this LNG life cycle, the Notifying Party explains that LNG shipping services are only provided internally by Shell and BG Group and that the Parties do not, therefore, compete on the potential relevant product market for the transportation of LNG by vessel that was previously identified by the Commission.¹⁰

Wholesale supply of LNG, including possible sub-segments for long-term and short-term LNG supplies

- (20) In relation to LNG, the Commission has previously considered whether the wholesale supply of LNG by vessel could constitute a separate relevant product market, which would be distinct from the supply of natural gas by pipeline.¹¹ In relation to this possible market for the wholesale supply of LNG by vessel, the Commission furthermore stressed that in conducting the competitive assessment, a firm's access to, or capacity rights at, import infrastructures (in particular regasification terminals) should be taken into account.¹² It considered that the possible market for the wholesale supply of LNG could either be national in scope, or encompass the entire EEA as well as Russian and Algerian imports.

- (21) The Commission has furthermore looked into whether separate relevant product markets could exist for each of the long-term and short-term (spot) supply of LNG.

⁹ COMP/M.6910 – *Gazprom / Wintershall / Target Companies* (2013).

¹⁰ COMP/M.5944 – *Osaka/UFG/InfrastructureArzak/Saggas* (2010).

¹¹ COMP/M.6910 – *Gazprom / Wintershall / Target Companies* (2013); COMP/M.6477 – *BP / Chevron / ENI / Sonangol / Total / JV* (2012); COMP/M.5585 – *Centrica / Venture Production* (2009); COMP/M.5220 – *ENI / Distrigaz* (2008); COMP/M.4545 – *Statoil / Hydro* (2007).

¹² COMP/M.6477 – *BP / Chevron / ENI / Sonangol / Total / JV* (2012).

- (22) The Notifying Party considers one overall product market for the wholesale supply of natural gas to exist (i.e. without any further sub-segmentation), which it considers to cover gas produced in the EEA as well as Algerian, Russian and Libyan gas imports into the EEA. Given that the only difference between natural gas supplied by pipeline and LNG would be that the latter has been cooled to allow for sea transport, the Notifying Party considers LNG to constitute a transport and storage modality, rather than a separate relevant product market. Also, the Notifying Party considers that no meaningful competition exists between the various joint venture companies that liquefy natural gas into LNG and that competition rather takes place downstream, on a market for the wholesale supply of natural gas. On that market, the Parties and their competitors would compete both for securing offtake rights at LNG liquefaction plants as well as for the conclusion of long-term and short-term LNG supply agreements with downstream customers (including, e.g., other wholesalers, trading firms and national importers).
- (23) To the extent that a separate relevant product market for the supply of LNG would exist, which it contests, the Notifying Party considers this to be worldwide in scope, in light of available transport capacity, a lack of import barriers and given similar price movements across the various regions of the world.
- (24) In relation to the existence of such a separate relevant product market for the wholesale supply of LNG, the market investigation carried out in the present matter yielded mixed results.
- (25) First, half of the Parties' competitors that replied to the Commission's market investigation indicated that, at the upstream wholesale level, the identity of customers is the same for LNG and non-liquefied gas, the other half indicating the opposite.¹³
- (26) However, the majority of competitors responding to the market investigation indicated that the prices of LNG and non-liquefied gas are different. Particularly, one respondent indicated that "*In general, cost of producing LNG is higher than that of non-liquefied pipeline gas because of the process by which LNG is brought to market:(i) extraction of natural gas and delivery of such natural gas through a pipeline to a processing facility; (ii) conversion of the natural gas to liquid form in a liquefaction plant; (iii) transportation in specially-designed LNG tankers; and (iv) delivery for re-gasification at a receiving terminal at the destination country. Therefore, we view that the price of LNG shall be higher than that of pipeline gas*". Another respondent indicated that "*Although there is a tendency towards convergence, because both LNG and non-liquefied (pipeline) gas constitute the basis of the same product, i.e., gas, there may be significant price differences due to the fact that LNG/non-liquefied (pipeline) gas are subject to different capacity constraints*".¹⁴
- (27) Also, the large majority of respondents to the Commission's market investigation indicated that LNG and non-liquefied gas are not comparable in terms of flexibility, particularly given the greater flexibility of LNG deliveries. According to one respondent, "*The delivery of LNG is more flexible than the delivery of non-liquefied (pipeline) gas, as the latter is limited by the existing pipeline network*", whereas another respondent indicated that "*Gas sold as LNG has a higher level of flexibility due to the use of LNG vessels which can be delivered to any market with a regasification terminal.*

¹³ Reply to Questionnaire 2 – Competitors, question 6.

¹⁴ Reply to Questionnaire 2 – Competitors, question 6.

Gas sold via pipeline can only be sold to the designated markets that the pipeline has been built for".¹⁵

- (28) Finally the market investigation was inconclusive in relation to the question of whether LNG and non-liquefied gas can be used interchangeably for the same applications. Half of the respondents to the market investigation in fact indicated that the intended use of LNG and non-liquefied gas is different, whereas the other half indicated the opposite. According to one respondent, "*Intended use may be the same for pipeline gas or LNG, although spot LNG cargoes offer a degree of flexibility more suitable to meet high season demand*" whereas another respondent indicated that "*Although generally LNG and non-liquefied (pipeline) gas have the same end use, the more significant flexibility in the delivery of LNG means that LNG is a particularly attractive option in order to meet demand in peak periods and to make balancing adjustments (supply/demand)*".
- (29) As regards the possible narrower distinction between long-term and short-term (spot) supplies of LNG, the Commission notes that the majority of the Parties' customers and competitors do not consider LNG supplied under long-term contracts and LNG-supplied on a short-term/spot basis to be comparable in terms of price/contractual conditions.¹⁶
- (30) The Commission therefore considers that indications exist that could support the finding of a separate relevant product market for the wholesale supply of LNG (national or EEA-wide in scope), possibly being further segmented into separate relevant markets for the long-term and short-term wholesale supply of LNG.

Sale of LNG to wholesalers at liquefaction facilities

- (31) As part of the present matter, the Commission has in addition assessed whether a separate relevant product market for the liquefaction of gas into LNG could exist, or whether the Parties' liquefaction capacity rather constitutes a mere proxy for their competitive strength in a LNG wholesale supply market. The Notifying Party explains that the Parties are both active in the liquefaction of gas into LNG via equity interests in various liquefaction plants across the globe, including in Nigeria, Trinidad & Tobago, Peru, Egypt, Brunei, Malaysia, Oman, Qatar, Russia and Australia. These plants are generally organised as joint venture companies due to the very high costs of both construction (billions of Euros) and operation (hundreds of millions of Euros per year). Stakeholders in these joint ventures can be both Independent Oil Companies (such as the Parties, ExxonMobil, Total, BP, Engie and others) and National Oil Companies (e.g. Qatargas, for the large plants located in Qatar). The joint venture companies operate the plants as independent companies. The control exercised over the joint ventures by the stakeholders is subject to the joint venture's shareholders' agreements, which can not only grant control to the majority stakeholder but also technical veto rights to (large) minority stakeholders.
- (32) The fact that it is the joint venture companies that operate liquefaction plants and in which the Parties have equity stakes, rather than the Parties themselves, that are the direct countersigning parties to long-term LNG supply agreements with downstream

¹⁵ Reply to Questionnaire 2 – Competitors, question 6.

¹⁶ Replies to Questionnaire 1 – Customers, question 9; Reply to Questionnaire 2 – Competitors, question 9.

LNG wholesalers – such as the Parties – could namely support the notion that the sale of LNG at LNG liquefaction plants to LNG wholesalers constitutes a separate relevant product market. This market would be situated upstream from the possible separate relevant product market for the wholesale supply of LNG. The Commission has also assessed what the geographic scope of such a potential relevant product market could be, by looking at actual and possible sources of LNG supply into the EEA. In this regard, the Commission notes that only one of the world's liquefaction facilities is currently located within the EEA (in Norway) and that EEA LNG supplies currently largely originate from outside the EEA. This would mean that from an EEA demand-side perspective, the LNG liquefaction market, were it to exist, would be limited to the EEA and certain extra-territorial supply regions.

- (33) As mentioned above, the Notifying Party considers that no meaningful competition exists between the various joint venture companies that liquefy natural gas into LNG and that competition rather takes place downstream, on a market for the wholesale supply of natural gas. On that market, the Parties and their competitors would compete both for securing offtake rights at LNG liquefaction plants as well as for the conclusion of long-term and short-term LNG supply agreements with downstream customers (including, e.g., other wholesalers, trading firms and national importers).
- (34) In relation to the existence of a separate relevant product market for the sale of LNG at LNG liquefaction plants (i.e. the liquefaction and sale to wholesalers of LNG), the Commission notes that the majority of the Parties' competitors that responded to its market investigation indicate that, although some players that are active across various stages of the LNG life cycle offer bundled LNG services (i.e. combinations of LNG liquefaction, LNG shipping, LNG wholesale supply, and regasification of LNG), this LNG value chain is nonetheless fragmented and each of its various stages could be characterised by different suppliers, customers, prices and/or intended use.¹⁷ What is more, the large majority of the Parties' customers and competitors that responded to the Commission's market investigation indicate that either they themselves or their competitors do offer LNG liquefaction services on a standalone basis (i.e. without combining it either in a bundled form with any other LNG-related services nor with the LNG wholesale supply).¹⁸ Finally, the vast majority of the Parties' competitors that responded to the Commission's market investigation indicate that, on the one hand, certain companies are active in the wholesale supply of LNG without having equity stakes in liquefaction facilities while, on the other hand, companies exist that hold equity stakes in liquefaction facilities without being active in the wholesale supply of LNG.¹⁹
- (35) The Commission considers that on the basis of these results, indications exist that could support the finding of a separate relevant product market for the liquefaction of LNG.
- (36) As regards the geographic scope of this potential relevant product market for the liquefaction of LNG, the Commission found evidence during its market investigation of actual LNG supplies into the EEA having occurred during the period 2012-2014 from Western Africa, the Caribbean, the Middle East, South America, the East Coast of North

¹⁷ Replies to Questionnaire 2 – Competitors, question 7.

¹⁸ Replies to Questionnaire 1 – Customers, question 3; Replies to Questionnaire 2 – Competitors, question 5.

¹⁹ Replies to Questionnaire 2 – Competitors, questions 8.2 and 8.3.

America, South-East Asia and from within the EEA.²⁰ Some of the Parties' competitors in addition mention the North American West Coast, Eastern Africa and Australia as regions from which a profitable supply of LNG into the EEA would be possible (although no indications exist that this actually occurred during 2012-2014). In a recent publication, the Commission also noted that excess LNG supplies from Nigeria and Qatar have returned to the Atlantic (including the EEA) as Asian spot prices have been on a par with the price of the UK gas hub (the National Balancing Point) since February 2015.²¹ Previously, a significant price differential existed between these two regions which resulted in many LNG cargoes being diverted away from the EEA (and, for example, replaced with spot gas acquired at European gas trading hubs) towards Asian markets.

(37) This supports the notion that no technical barriers exist that prevent LNG liquefaction plants in the aforementioned regions being used for the supply of LNG into the EEA. In this regard, it is also important to note that the majority of the Parties' competitors indeed explain that the key factor that could limit firms' ability to supply LNG into the EEA from any region in the world is the price that can be obtained for delivery of LNG into the EEA relative to delivery into other regions of the world (which can in turn depend on the availability of alternative sources of gas supply in the EEA relative to other regions in the world).²²

(38) During the Commission's market investigation, a concern was however raised in relation to the merged entity's increased position in liquefaction capacity within a (more) limited geographic market referred to as the 'Atlantic Basin', encompassing Northern and Western Africa, South America, the EEA (Norway), and the Caribbean (although this concern related to a market for the wholesale supply of LNG). The fact that the relevant geographic scope of the market would be more limited would in particular result from the relative difference in transport costs for the supply of LNG from, respectively, the Atlantic and Pacific basins. Based on information provided by the Notifying Party, the Commission has been able to confirm that the cost of transport of LNG into the EEA from the Atlantic Basin (which the Commission considers, on the basis of the results of its market investigation, to at least encompass the EEA, the North American East Coast, the Caribbean, South America and Northern and Western Africa) can be significantly lower than the cost of transport of LNG into the EEA from, in particular, Asia (including Australia) as well as, to an extent, from the Middle East (the cost of transport of LNG into the EEA from Nigeria would amount to just over [30-40] per cent of the cost of transport of LNG into the EEA from Malaysia).²³

(39) Also, the Commission's market investigation showed that no actual LNG supplies into the EEA seem to have been made from the North American West Coast, East Africa and Australia during the period 2012-2014, which could mean that these supply regions do not form part of the LNG liquefaction market insofar as the EEA is concerned.²⁴

(40) In light of these results, the Commission considers that indications exist that the potential separate relevant product market for the provision of LNG liquefaction

²⁰ Replies to Questionnaire 2 – Competitors, question 13.

²¹ European Commission (DG Energy Market Observatory for Energy) Quarterly Report on European Gas Markets, Volume 8 (issue 1, first quarter of 2015), p. 19.

²² Replies to Questionnaire 2 – Competitors, question 16.

²³ Notifying Party's response to the Commission's request for information of 30 July 2015.

²⁴ Replies to Questionnaire 2 – Competitors, question 13.

capacity could be limited to the so-called Atlantic basin (encompassing the EEA, the North American East Coast, the Caribbean, South America, and Western Africa), or possibly also including the Middle East and South Eastern Asia (i.e. excluding the North American West Coast, East Africa and Australia).

4.2.2. *Conclusion on LNG-related markets*

(41) In light of the above, the Commission considers that some indications exist that could support the finding of separate relevant product markets for the liquefaction of LNG (at least including liquefaction plants located in the EEA, the North American East Coast, the Caribbean, South America and Northern and Western Africa, but possibly including liquefaction plants located in the Middle East and South Eastern Asia in addition) as well as for the wholesale supply of LNG (national or EEA-wide), the latter market possibly being further sub-segmented into long-term and short-term (spot) supplies thereof. In any event, the precise delineation of the relevant product markets involving LNG 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 product and geographic market definition.

4.3. **Offshore transportation of oil & gas by pipeline**

(42) The Commission has previously considered that separate relevant product markets could exist for the offshore transportation of (i) crude oil by pipeline²⁵ and (ii) natural gas by pipeline²⁶. The geographic scope of these two markets was considered to be limited to the respective North North Sea ("NNS" – north of latitude 55°), South North Sea ("SNS") and Norway regions. The Notifying Party agrees with these product and geographic market definitions.

4.4. **Oil & gas processing activities**

(43) The Commission has previously considered that separate relevant product markets could exist for (i) the processing of crude oil and (ii) the processing of natural gas²⁷. The geographic scope for these markets would be the respective North Sea regions (NNS, SNS, and Norway). The Notifying Party agrees with this approach.

5. **COMPETITIVE ASSESSMENT**

(44) Below, the effects on competition are assessed for the above mentioned significant overlaps. The only horizontally affected market is the possible market for the liquefaction of LNG, while the only vertically affected markets are this possible LNG liquefaction market and the related, possible market for the wholesale supply of LNG. The Commission has in addition looked into those markets where the proposed transaction would, for example, create an industry leadership position for the merged entity – notwithstanding low post-merger market shares due to the fragmented nature of the markets involved. As regards the possible LNG markets, the Notifying Party itself indeed considers that it will strengthen an industry leadership position through the proposed transaction²⁸. Finally, the Commission has looked into whether certain of the

²⁵ COMP/M.2745 – *Shell / Enterprise Oil* (2002); COMP/M.1573 – *Norsk Hydro / Saga* (1999).

²⁶ COMP/M.2745 – *Shell / Enterprise Oil* (2002).

²⁷ COMP/M.2745 – *Shell / Enterprise Oil* (2002).

²⁸ Internal business document of the Notifying Party of 05.04.2015, Para. 79.

Parties' gas transportation and processing infrastructure in the North Sea could be used to foreclose competing upstream wholesalers of gas active in that region.

- (45) In light of the foregoing, a competitive assessment of possible horizontal non-coordinated effects is made in the following sections in respect of (i) exploration for oil and gas reserves, (ii) liquefaction of LNG, and (iii) upstream wholesale supply of LNG. Possible vertical non-coordinated effects are assessed for (iv) liquefaction of LNG – upstream wholesale supply of LNG, and (v) production, development and wholesale supply of natural gas – processing & transportation of gas.

5.1. Horizontal non-coordinated effects.

- (46) The Commission has published guidelines on the assessment of horizontal mergers (the "horizontal guidelines").²⁹ These guidelines, and in particular their part IV, form the basis for the analysis below.

5.1.1. Exploration for oil and gas

- (47) The Commission notes at the outset that on a possible worldwide market for the exploration for oil and gas, given that a significant proportion of global exploration licenses are awarded by national governments to their national oil & gas companies ("NOCs"), the actual *addressable* market for the Parties and their main competitors could be limited to exploration licenses the award of which can also be competed for by so-called independent oil & gas companies ("IOCs").

- (48) The Notifying Party acknowledges that, indeed, in certain jurisdictions exploration licenses are exclusively awarded to NOCs and it has, therefore, also provided market share data in which these jurisdictions are not taken into account.³⁰ Notwithstanding, it considers that the proposed transaction will not have any impact on competition on this market given its very fragmented nature and the marginal combined market share of the Parties under any possible measure.

- (49) The Commission's market investigation carried out in the present matter provided indications for the notion that, indeed, NOCs and IOCs do not compete subject to the same conditions. In fact, the majority of the Parties' competitors contacted in the course of the market investigation indicated that NOCs and IOCs do not compete on the same terms. However, some respondents to the market investigation indicated that effective competition between NOCs and IOCs may exist if NOCs are participating in tenders for projects outside their home nations.³¹

- (50) In light of the foregoing, the Commission takes the view that it may be appropriate to limit the relevant, addressable market to exploration licenses the award of which can also be competed for by IOCs.

- (51) Taking into account the above, Table 1, below, sets out the Parties' position relative to other major IOCs on a possible worldwide exploration market (including NOCs), taking into account different measures of success that seem to be used in the marketplace. It can be seen that a number of strong IOC competitors that are equivalent

²⁹ OJ No C 31, 5 February 2004, p. 5.

³⁰ Form CO, Annex 4.

³¹ Replies to Questionnaire 2 – Competitors, question 24.

in size to (or larger than) the merged entity will, post-transaction, continue to exert significant competitive pressure upon the merged entity.

Table 1 - Exploration for oil & gas						
	Proven reserves (million barrels)		Expenditure (USD million)		Licenses won (field acreage, km ²)	
	2014	%	2014	%	2014	%
Shell	[..]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%
BG Group	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Combined entity	[...]	[0-5]%	[...]	[10-20]%	[...]	[0-5]%³²
BP	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
ExxonMobil	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Chevron	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Total	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Statoil	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%

(52) The Parties' combined market share will moreover remain highly limited under any measure of success that seems to be used in this market. The measure 'licenses won' is particularly relevant as it shows that the Parties' combined position on the 'addressable' market mentioned above (i.e. a market limited to exploration licenses whose bidding procedures are open not only to local NOCs, but also to IOCs and third-country NOCs³³) is not significantly different from their combined position on an overall market including all IOCs and NOCs. What is more, the increment in the Notifying Party's market share that will be brought about by the proposed transaction is minimal, amounting to at most [0-5] percentage points. On that basis, the Commission considers that the proposed transaction is unlikely to give rise to any competition concerns on this market.

(53) What is more, the Commission's market investigation carried out in the present matter provided support for the Notifying Party's claim that the market is very fragmented, with a number of IOCs having a comparable market position to those of Shell and BG Group. The vast majority of the Parties' customers contacted during the

³² The figures for licences won are subject to significant fluctuations. The Parties' combined share in 2013 was [10-20]%, for part of 2015 it amounts to [20-30]% (field acreage [...] km²). However, there are still strong competitors, in 2015 e.g. ENI with [5-10]% and Statoil with [5-10]% (also for part of 2015).

³³ Form CO, para. 6.12.

course of the market investigation indicated in this regard that at least 4 other IOCs exist having a market position comparable to that of the Parties, while many respondents mentioned even more IOCs as having a comparable market position.³⁴ Competitors contacted during the course of the market investigation also gave similar indications.³⁵ Accordingly, the Notifying Party will, post-merger, continue to face significant competitive pressure from a number of very large international oil and gas majors active in this worldwide market for the exploration for oil and gas.

(54) The Commission also understands from its market investigation carried out in the present matter that, on this possible market for exploration for oil and gas, neither of the Parties is regarded as the strongest player. On the contrary, all customers responding to the market investigation indicated that players such as ExxonMobil or Chevron are considered as stronger players than the Parties. Competitors contacted in the course of the market investigation gave similar indications.

(55) Finally, in line with the Commission's above assessment, the vast majority of the Parties' competitors and customers contacted during the Commission's market investigation in the present matter did not expect the proposed transaction to have any impact on the intensity of competition existing in the possible market for the exploration for oil and gas.³⁶

(56) In light 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 in relation to a possible worldwide market for the exploration for oil and gas.

5.1.2. Sale of LNG to wholesalers at LNG liquefaction facilities

(57) As mentioned above, the Parties have participating interests in a number of joint ventures active in the liquefaction of natural gas into LNG.

i. View of the Notifying Party

(58) The Notifying Party claims that competition does not take place at the liquefaction level, but rather at the downstream level of the wholesale supply of LNG.

(59) In any event, the Notifying Party claims that if competition was to take place at liquefaction level, the Parties' combined market share would be very limited and in any event below [30-40]% at worldwide level.³⁷ This calculation has been made by the Notifying Party attributing to the Parties the entire liquefaction capacity of any liquefaction joint venture in which they have a controlling stake or a technical veto right. However, according to the Notifying Party, this calculation is overly conservative and clearly overestimates the Parties' market share as it is highly unlikely that a technical veto right would allow them to influence the commercial policy of a liquefaction joint venture, especially in cases where the majority and controlling shareholder is an NOC.

³⁴ Replies to Questionnaire 1 – Customers, question 18.

³⁵ Replies to Questionnaire 2 – Competitors, question 20.

³⁶ Replies to Questionnaire 1 – Customers, question 40.3; Replies to Questionnaire 2 – Competitors, question 41.

³⁷ Form CO, para 6.113.

ii. Assessment

- (60) The market investigation to a certain extent backed the Notifying Party's claim as to the fact that competition takes place at a further step of the LNG value chain. In fact, the majority of competitors responding to the market investigation indicated that they consider LNG liquefaction capacity as an indicator of competitiveness on the supply of LNG.³⁸
- (61) However, as explained in the market definition section of the present decision, the Commission has found indications for the existence of a separate relevant market for LNG liquefaction capacity. Accordingly, the Commission has carried out a horizontal and vertical competitive assessment of the effects of the proposed transaction possibly resulting from the Parties' activities in LNG liquefaction.
- (62) In this respect it is first of all important to note that, according to the Parties' competitors that responded to the Commission's market investigation, Shell's share of liquefaction capacity would not exceed 20% even under the narrowest plausible geographic market definition. As regards BG Group's share of liquefaction capacity, this would even amount to less than 10% under any plausible market definition according to the large majority of competitors.³⁹
- (63) The position of the Parties seems to be more significant only in case their liquefaction capacity in the so-called 'Atlantic basin' is taken into account. Given that a concern was also raised in relation to an anti-competitive increase in the Parties' control over liquefaction capacity in this Atlantic basin, the Commission has conducted its competitive assessment on the basis of this narrow geographic scope. Given that the aforementioned concern revolves around a theory of vertical foreclosure, the details thereof are set out in section 5.2.1, below.
- (64) In this geographic area encompassing the EEA, the Caribbean, the East Coast of the USA and West and North Africa, the Parties have participating interests in a number of liquefaction JVs granting them either control or technical veto rights. Under a worst case scenario approach by which the full capacity of any liquefaction plant over which any of the Parties holds a technical veto right is taken into account – notwithstanding that the actual offtake rights at these facilities may have already been contracted by third parties on a long-term basis – the combined market share of the Parties in the Atlantic basin in terms of liquefaction capacity would currently amount to around [50-60]% (Shell's and BG Group's current share of liquefaction capacity in the Atlantic basin would have respectively amounted to [40-50]% and [5-10]% in 2014.⁴⁰ The Parties' current individual shares of liquefaction capacity within the Atlantic basin are however likely to be more limited, as they will only acquire a veto right over [...]⁴¹ as a result of the combination of the Parties' respective equity interest in this facility.

³⁸ Replies to Questionnaire 2 – Competitors, question 23.

³⁹ Replies to Questionnaire 2 – Competitors, question 25.

⁴⁰ Form CO, Table 6.21.

⁴¹ [...].

- (65) Notwithstanding the size of the merged entity's share of liquefaction capacity in this narrow possible geographic market, the Commission takes the view that the proposed transaction does not confer upon the merged entity a significant degree of market power and does not, therefore, give rise to serious doubts as to its compatibility with the internal market.
- (66) First and most importantly, the Commission's market investigation has provided evidence of LNG imports into the EEA having originated from regions outside the Atlantic basin. In this respect it is also important to note that the Notifying Party explains that already in 2013, LNG liquefied within the Atlantic basin accounted for only between 44% and 55% of net LNG imports into the EEA.⁴²
- (67) In addition, as already mentioned above, the Commission has recently noted that excess LNG supplies from Nigeria and Qatar have returned to the Atlantic basin (including the EEA) as Asian spot prices have been on a par with the price of the UK gas hub (the National Balancing Point) since February 2015.⁴³ Accordingly, the Parties' control over liquefaction capacity within the Atlantic basin is unlikely to constitute an accurate measure of their ability to exercise market power over the EEA demand-side of this possible LNG liquefaction market, as it would likely face additional competition from, for example, one of the world's largest suppliers of LNG, Qatar Petroleum (which would control [20-30]% of global LNG liquefaction capacity in 2014⁴⁴).
- (68) Second, a number of additional liquefaction facilities – in respect of which a final investment decision ("FID") has been already taken and which are under construction – will come online in the Atlantic Basin in the near future. The merged entity will not have a participating interest in any of these additional facilities. This development will significantly dilute the merged entity's share of liquefaction capacity even on this narrow possible geographic market. According to information provided by the Notifying Party, the additional post-FID liquefaction facilities will add at least around [...] mtpa⁴⁵ of liquefaction capacity to the Atlantic basin in the near future, out of which the Parties would only have contracted offtake rights in the amount of (at most, by 2020) [...] mtpa.⁴⁶ This third-party controlled additional capacity exceeds the Parties' current and forecasted (2014-2020) combined liquefaction capacity within the Atlantic basin and therefore renders it unlikely that the merged entity will hold any substantive degree of market power over liquefaction capacity within the Atlantic basin.

⁴² Notifying Party's response to the Commission's request for information of 30 July 2015.

⁴³ European Commission (DG Energy Market Observatory for Energy) Quarterly Report on European Gas Markets, Volume 8 (issue 1, first quarter of 2015), p. 19.

⁴⁴ Form CO, Table 6.19.

⁴⁵ Form CO, Table 6.34.

⁴⁶ Form CO, para. 6.176.

- (69) Third, some of the downstream wholesalers of LNG vis-à-vis whom the merged entity would exercise this alleged market power are also shareholders having a technical right of veto in respect of the Parties' liquefaction facilities in the Atlantic basin. Indeed, [...], one of the Parties' largest downstream competitors, has a technical right of veto or control over [...] (representing [40-50]% of [...]s total capacity). Also, each of [...] and [...] have a technical right of veto or control over [...], [...] and representing [...] of the Parties' market share of [50-60]% in 2014. Finally, [...] has a technical right of veto or control over [...] which represented another [5-10]% of the Parties' Atlantic basin liquefaction share of [50-60]%.⁴⁷ By exercising their right of veto, these downstream competitors could frustrate an attempt by the merged entity to increase prices or otherwise worsen supply conditions for downstream wholesalers to the advantage of the merged entity – in order to prevent the latter from obtaining a competitive advantage on the related downstream market for the wholesale supply of LNG.
- (70) Fourth, the Parties' share of long-term contracted offtake rights (i.e. the right to off-take LNG at liquefaction plants) within the Atlantic basin amounted to only [20-30]%, which means that a significant proportion of the offtake rights at the liquefaction facilities within the Atlantic basin over which the merged entity would hold a technical right of veto would already be contracted to third parties on a long-term basis. It appears likely that the contractual conditions of these long-term offtake agreements in the Atlantic basin would, in turn, prevent the Notifying Party from exercising its market power by using its control/veto rights to weaken its competitors' positions. These agreements' duration is typically longer than 10 years, and often at least 20 years.
- (71) Furthermore, not only the duration but also other conditions of these long-term contracts are rather fixed. The Parties' own offtake agreements in the Atlantic basin [information relating to contractual terms]. Furthermore, only [...] Parties' offtake contracts offers the opportunity [information relating to contractual terms].⁴⁸ The market investigation confirmed that these conditions for the Parties' own contracts are very similar to those that can be found in the vast majority of third party offtake agreements in the Atlantic basin. According to the Notifying Party's competitors, it is “standard in the market” not to have a possibility to unilaterally terminate the offtake agreement during its lifetime.⁴⁹ Although a number of competitors indicated that price revision clauses can be part of such contracts⁵⁰, these revisions are usually subject to material changes in the contract's price basis (e.g. a material change of gas price indexes such as Henry Hub) and/or subject to arbitration.
- (72) This would likely limit the ability of the merged entity to exercise any form of market power it would allegedly derive from its liquefaction capacity share, especially given that in 2014 only [60-70]% of all liquefaction capacity within the Atlantic basin would have been contracted on a long-term basis⁵¹ and it is likely that there will be sufficient uncontracted capacity at any time in the future. The various long-term contracts covering the provision of liquefaction capacity would namely come up for renewal only at a much later stage and at different points in time. Indeed, even in years

⁴⁷ Notifying Party's response to Commission's request for information of 30 July 2015, Table 6.1.

⁴⁸ Annex 1 to Notifying Party's response to the Commission's request for information of 30 July 2015.

⁴⁹ Replies to Q2 – Competitors, question 35.

⁵⁰ Replies to Q2 – Competitors, question 36.

⁵¹ Notifying Party's response to the Commission's request for information of 30 July 2015.

when many large offtake contracts end at the same time (2019: [...] mtpa, 2022: [...] mtpa, 2026: [...] mtpa⁵²) it is currently forecasted that much more liquefaction capacity will be available than the amount of liquefaction capacity needed by the offtakers to switch away from the merged entity (capacity not contracted under long-term agreements remains stable above [...] mtpa in recent years and going forward to 2020 and is even increasing⁵³). This would likely mean that the relevant customer seeking renewal would find sufficient alternative sources of uncontracted liquefaction capacity for its relatively limited demand. It is important to note in that respect that the Parties would only control around [30-40]% of uncontracted liquefaction capacity in the Atlantic basin.⁵⁴

- (73) Fifth and finally, a majority of the Parties' customers and competitors that replied to the Commission's market investigation consider that the proposed transaction will not have an impact on the price level within the EEA for LNG supplied either under long-term contracts or under short-term contracts and on a spot basis.⁵⁵ In line with these responses, it is also noteworthy that only one of the Parties' competitors and only one of their customers expected the proposed transaction to change the degree to which the various existing pricing mechanisms (oil indexation, gas hub indexation, price corridors, etc.) are used in their portfolio of long-term LNG supply contracts.⁵⁶ These results go against any finding of anti-competitive effects resulting from the increase in the Parties' LNG liquefaction capacity resulting from the proposed transaction. What is more, the large majority of the Parties' customers and competitors consider that the global and EEA markets for the supply of LNG are characterised by excess production, liquefaction and supply capacity (and are forecasted to remain so between now and 2020).⁵⁷

Conclusion

- (74) In light of the above, the Commission takes the view that the merged entity will not enjoy a significant degree of market power in a possible market for the liquefaction of LNG – even based on the narrow scope of the geographic market encompassing only the 'Atlantic basin'. Accordingly, 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 (alleged) horizontal non-coordinated effects in a possible LNG liquefaction market.

⁵² Annex 1 to Notifying Party's response to the Commission's request for information of 30 July 2015.

⁵³ Notifying Party's response to the Commission's request for information of 30 July 2015.

⁵⁴ Notifying Party's response to the Commission's request for information of 30 July 2015.

⁵⁵ Replies to Questionnaire 1 – Customers, questions 39 and 40; Replies to Questionnaire 2 – Competitors, questions 39 and 40.

⁵⁶ Replies to Q2 – Competitors, question 29.

⁵⁷ Replies to Questionnaire 1 – Customers, question 25; Replies to Questionnaire 2 – Competitors, question 27.

5.1.3. *Upstream wholesale supply of LNG*

- (75) As regards the possible national markets for the wholesale supply of LNG within the EEA, the Parties' activities are highly limited and in any event⁵⁸ less significant than their position on a possible EEA-wide or even on a hypothetical worldwide market. Indeed, in 2014, the Parties' activities overlapped in France, where they held a combined market share of only [0-5]%, and in Spain, where BG Group [...] held a market share of only [0-5]% in 2014 – while the Parties combined market share remained below [20-30]%.
- (76) Therefore, the Commission has assessed the potential impact of the proposed transaction on possible EEA-wide and hypothetical worldwide markets, given that the Parties' LNG activities are – if at all – most significant at these geographic scopes. Similarly, the Commission notes that the possible narrower market for the short-term/spot supply of LNG (separate from long-term supply) forms part of wider markets for spot natural gas (i.e. piped and LNG) supply. This results from the fact that LNG spot volumes are not traded as a separate commercial product but rather delivered as short-term, regasified natural gas on natural gas trading hubs within the EEA. In relation to the trading of natural gas on onshore gas hubs, the Parties' combined shares for all the gas hubs where they overlap are significantly below [10-20]%. Accordingly, the possible distinction between long-term and short-term/spot supply of LNG is not discussed further.
- (77) On the possible market for the upstream wholesale supply of LNG, at both worldwide and EEA level, the proposed transaction would lead to a significant strengthening of the Notifying Party's existing position. In fact, both Parties are significant players on this market and their combination will likely create a market leader.
- (78) Notwithstanding the above, the market for the upstream wholesale supply of LNG is very fragmented – both at worldwide level as well as within the EEA (including at national level) – with a number of players having a position comparable to that of the merged entity. Therefore, in spite of its possible industry leadership position amongst at least IOCs, the merged entity will hold a limited market share, as shown in the table below.

⁵⁸ In relation to national markets where the Parties' activities overlap.

Table 2 – Upstream wholesale supply of LNG – worldwide and EEA shares (2014 and 2020⁵⁹)

	Worldwide				EEA			
	Liquefaction capacity (% and mtpa)		Sales volume (% and mtpa)		Sales volume (% and mtpa)		Regasification capacity (% and bcm/a)	
	2013	2020	2014	2018/ 2020	2014	2020	2014	2020
Shell	[20-30]% ([...])	[10-20]% ([...])	[5-10]% ([...])	[5-10]% ([...])	[5-10]% ([...])	[0-5]% ([...])	[0-5]% ([...])	[0-5]% ([...])
BG Group	[0-5]% ([...])	[0-5]% ([...])	[0-5]% ([...])	[10-20]% ([...])	[0-5]% ([...])	[0-5]% ([...])	[0-5]% ([...])	[0-5]% ([...])
Combined entity	[20-30]%⁶⁰ ([...])	[10-20]% ([...])	[10-20]%⁶¹ ([...])	[10-20]% ([...])	[5-10]% ([...])	[5-10]% ([...])	[0-5]% ([...])	[0-5]% ([...])
BP	[10-20]% ⁶² ([...])	[5-10]% ([...])	[0-5]% ([...])	- ⁶³	-	-	-	-
Exxon Mobil	[20-30]% ([...])	[10-20]% ([...]) ¹	[5-10]% ([...])	-	[20-30]% ([...])	-	[0-5]% ([...])	[0-5]% ([...])
Engie	--	--	[0-5]% ([...])	-	[10-20]% ([...])	-	[10-20]% ([...])	[10-20]% ([...])
Total	[20-30]% ([...])	[20-30]% ([...])	[0-5]% ([...])	-	[0-5]% ([...])	-	[0-5]% ([...])	[0-5]% ([...])

⁵⁹ Given that the largest part of the world's LNG liquefaction capacity and LNG wholesale supplies are contracted on a very long-term basis, and given that liquefaction plants have a long lead time for their construction (recent projects are expected to require around four years to construct, costing many billions of dollars) while the coming on-stream of a single liquefaction plant can significantly impact a company's market position due to their large capacity, the Commission considers that future, projected liquefaction and supply market shares can provide a relevant and sufficiently reliable indication of the expected future market power of companies in the LNG-sphere.

⁶⁰ These figures are calculated by attributing to the Parties 100% of the available capacity of each of the plants over which the Parties have control or a technical right of veto. The Notifying Party itself takes the view that this leads to multiple-counting of capacity and is therefore significantly overstating the Parties' position in liquefaction. Accordingly, this market share should be considered the worst-case scenario.

⁶¹ In its Internal Documents the Notifying Party also uses the term 'delivered volumes' which would be [...] mtpa for Shell and [...] mtpa for BG Group in 2014. However, as these figures combine the liquefaction level with the wholesale supply level, the Notifying Party claims that this is not an appropriate measurement for market strength.

⁶² Figures for competitors are calculated differently from those of the Parties. This is because the Notifying Party claims to have no knowledge of the Parties' competitors' control/veto rights in the liquefaction plants they have interests in. Therefore, each competitor's capacity is calculated by multiplying its equity stake in each liquefaction plant with the overall capacity of the respective plant.

⁶³ The Notifying Party was unable to calculate competitors' future supply volumes (based on existing contracts).

i. View of the Notifying Party

- (79) The Notifying Party claims that the proposed transaction will not have any impact on competition on this market.
- (80) First, the Notifying Party claims that it is not appropriate to analyse their market power on this market taking as proxy their position at the liquefaction level. The Notifying Party submits that at the wholesale level the only relevant volumes of LNG are those upon which the Parties have commercial control over, therefore only those that they off take directly from liquefaction JVs where they have an equity interest or those that they contract from other liquefaction JVs.
- (81) On the basis of this claim, the Notifying Party submits that, post-transaction, the Parties' combined market share would be limited, estimated at [10-20]% worldwide and [5-10]% EEA wide.
- (82) Second, the Notifying Party claims that the market share increment brought about by the proposed transaction is minimal. In fact, at worldwide level BG Group has an estimated market share of [0-5]% and at EEA level of [0-5]%. Also, the Notifying Party submits that on this market there are a number of competitors of comparable strength.
- (83) Finally, the Notifying Party claims that LNG competes also with natural gas sold by pipeline and that the imports of LNG into the EEA are substantially lower than the potential imports which could be brought in.
- (84) In light of the above, the Notifying Party submits that the proposed transaction will not give rise to an affected market on the hypothetical market for the wholesale supply of LNG.

ii. Assessment

- (85) Respondents contacted in the course of the Commission's market investigation provided indications that support the notion that, indeed, the possible market for the upstream wholesale supply of LNG is very fragmented and competitive in nature.
- (86) In fact, the vast majority of customers contacted indicated that a number of competitors, such as ExxonMobil, are considered stronger or equally strong as the Parties on the market for the upstream wholesale supply of LNG.
- (87) Also, the Commission considers (based on the results of its market investigation) that – notwithstanding the fact that the merged entity will hold a large worldwide market share among IOCs – post transaction the market will remain competitive (at all alternative geographic levels). In fact, a number of competitors with similar market shares will remain post transaction, such as KOGAS ([10-20]%), ExxonMobil ([5-10]%) and Tepco ([5-10]%). The market investigation gave similar indications: the vast majority of the Parties' customers that responded to the Commission's market investigation indicated that neither Shell nor BG Group are considered as essential suppliers of LNG into the EEA and that the market is highly fragmented and

competitive.⁶⁴ For example, one respondent indicated that: "*No company or suppliers [sic] is indispensable in the LNG market as it is widely diversified*". Another respondent mentioned that: "*The EEA has access to a number of global LNG suppliers other than Shell*".⁶⁵

(88) Moreover, a majority of the Parties' competitors that responded to the Commission's market investigation indicate that a number of players have entered the market for the wholesale supply of LNG in the last five years and that entry of new players is expected.⁶⁶ According to the respondents to the Commission's market investigation, this can be due to the increase in global (and EEA) demand of LNG. To this effect, a respondent to the market investigation indicated that "*new entrants are expected to participate in the future to the EEA and global gas and LNG markets*". Another one explained that "*as the LNG demand in the world (including the EEA) is expected to be doubled for the next decade, we suppose that a number of LNG players would try to enter into the EEA for seeking new business opportunities*".⁶⁷

(89) Another factor that is relevant to take into account in assessing the Parties' position on a possible market for the wholesale supply of LNG into the EEA is their regasification capacity. The Parties' activities in this segment are limited given the fact that regasification is mostly done by the Parties' LNG customers, i.e. the downstream wholesalers. The Parties do not control any regasification terminal in the EEA and have only limited contracted capacity usage that leads to an EEA-wide share in regasification capacity of only [0-5]% in 2014.⁶⁸ On potential narrower national markets the Parties' activities do not overlap at all. The Commission accordingly considers, in light of the Parties' limited individual and combined share of the upstream wholesale supply of LNG in the EEA (including at national level), that the proposed transaction is unlikely to create or strengthen any position of significant market power on the part of the Notifying Party.

(90) Finally, a majority of the Parties' customers and competitors that replied to the Commission's market investigation consider that the proposed transaction will not have an impact on the price level within the EEA for LNG supplied either under long-term contracts or under short-term contracts and on a spot basis.⁶⁹ In line with these responses, it is also noteworthy that only one of the Parties' competitors and only one of their customers expected the proposed transaction to change the degree to which the various existing pricing mechanisms (oil indexation, gas hub indexation, price corridors, etc.) are used in their portfolio of long-term LNG supply contracts.⁷⁰ These results go against any finding of anti-competitive effects resulting from the – in any event limited – increase in the Notifying Party's position on hypothetical worldwide and possible EEA-wide (as well as on the various possible national) markets for the upstream wholesale supply of LNG resulting from the proposed transaction.

⁶⁴ Replies to Questionnaire 1 – Customers, questions 28 and 29.

⁶⁵ Replies to Questionnaire 1 – Customers, question 28.

⁶⁶ Replies to Questionnaire 2 – Competitors, question 33.

⁶⁷ Replies to Questionnaire 2 – Competitors, question 34.2.

⁶⁸ Form CO, Table 6.29.

⁶⁹ Replies to Questionnaire 1 – Customers, questions 39 and 40; Replies to Questionnaire 2 – Competitors, questions 39 and 40.

⁷⁰ Replies to Q2 – Competitors, question 29.

- (91) In light of the above, the Commission takes the view that, post-transaction, the merged entity will not enjoy a significant degree of market power and will continue to face fierce competition from a large number of existing players on the market. Also, the Commission expects that in the near future competition will be even fiercer in the light of likely entry of new players on this market.
- (92) Therefore, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to a possible worldwide or EEA-wide market for the upstream wholesale supply of LNG.

5.2. Non-horizontal non-coordinated effects

- (93) The Commission has published guidelines on the assessment of non-horizontal mergers (the "non-horizontal guidelines").⁷¹ These guidelines, and in particular their part IV.A, form the basis for the analysis below.

5.2.1. Sale of LNG to wholesalers at liquefaction facilities – Upstream wholesale supply of LNG

- (94) The proposed transaction could give rise to vertically affected markets involving the liquefaction of LNG and the upstream wholesale supply of LNG only in case the possible upstream liquefaction market were to be limited to the Atlantic basin. As already mentioned above, the results of the Commission's market investigation run counter to the finding of such a narrow geographic liquefaction market. Accordingly, the Notifying Party is unlikely to, post-merger, have an ability to engage in anti-competitive input foreclosure in relation to its LNG liquefaction capacity.⁷²
- (95) As already explained, a concern was raised during the Commission's market investigation in relation to this vertical relationship. Essentially, the combined entity would have a merger-specific ability and incentive to engage in anti-competitive input foreclosure by refusing to supply LNG at liquefaction facilities within the Atlantic basin, where the merged entity would control more than half of the overall liquefaction capacity (or by worsening the conditions of such supply). Given that no alternative sources of supply of liquefaction capacity would exist within this Atlantic basin, and given that liquefaction facilities in other regions of the world would not allow a competitive supply of LNG into the EEA, the merged entity would be able to increase prices on the market for the upstream wholesale supply of LNG into the EEA. This input foreclosure strategy would ultimately result in negative effects on EEA consumers, as increased LNG prices would be passed on to operators on the downstream wholesale and retail gas supply markets in the EEA, especially during times of peak gas demand as LNG would constitute the cheapest form of flexible gas supply. Finally, the long-term character of most of the existing offtake agreements covering the merged entity's Atlantic basin liquefaction capacity would not be able to prevent foreclosure; on the one hand, the merged entity would not necessarily respect its obligations under them while, on the other hand, the expiry date of these contracts would not necessarily lie in the long-term.

⁷¹ OJ No C 265 of 18.10.2008, p. 6.

⁷² Non-horizontal guidelines, para. 35.

i. View of the Notifying Party

- (96) The Notifying Party considers that post transaction it would neither have the ability nor the incentive to engage in such an input foreclosure strategy. This is because of the following reasons.
- (97) First, the Notifying Party claims that the combined entity will not have any market power on a hypothetical market for LNG liquefaction, and therefore the combined entity will not have the ability to foreclose access to liquefaction capacity. The Notifying Party in fact claims that any attempt to foreclose would be countered by the significant liquefaction capacity in third parties hands, both in the Atlantic Basin and globally.⁷³
- (98) Second, the Notifying Party claims that the combined entity will not have an incentive to foreclose because:
- a. LNG is constrained by the supply of natural gas by pipeline. Therefore a hypothetical foreclosure strategy would not have a significant impact on LNG prices; and,
 - b. for a foreclosure strategy to be successful, the combined entity should have a significant share on the downstream market so as to capture the sales lost by the foreclosed competitors. However the combined entity will have a low market share on the downstream market.

ii. Assessment

- (99) The Commission takes the view that the combined entity will not have any merger-specific ability or incentive to foreclose customers from access to LNG offtake rights at liquefaction plants in the Atlantic Basin.
- (100) The Commission first of all refers to section 5.1.2 above, where it sets out why the Notifying Party is unlikely to, post-merger, hold any form of market power on a possible LNG liquefaction market, regardless of its precise geographic scope.
- (101) Particularly relevant in this regard is the fact that some of the customers that would be the subject of such an attempted input foreclosure strategy are the very parties that hold technical veto rights over the behaviour of the largest part of the merged entity's liquefaction capacity within the Atlantic basin. These downstream customers of the Notifying Party would, accordingly, likely have the ability to frustrate an attempted foreclosure. Also, the Commission notes that a large number of additional, third-party controlled liquefaction facilities are currently under construction within the Atlantic basin which should provide significant alternative supply sources to the companies that would be the subject of an attempted foreclosure. Finally, the contractual conditions of the long-term offtake agreements in the Atlantic basin also prevent the Notifying Party from engaging in input foreclosure post-transaction. This is because, as described in [paragraph 71] above, (i) contracts cannot be unilaterally terminated, (ii) price revisions are subject to material changes in the price basis and/or lengthy arbitration procedures, and (iii) current contracts come up for renewal only at a much later stage and at different points in time and the available uncontracted capacity in third-party hands in the

⁷³ Submission on Atlantic Basin Liquefaction Capacity (incorporating responses to RFI dated 19 August 2015), paragraph 1.4.

Atlantic basin is forecasted to significantly exceed the demand represented by any (group of) hypothetically foreclosed customers of the merged entity. Therefore, the capacity controlled by the Notifying Party is not pivotal for downstream customers either. Accordingly, the Notifying Party is unlikely to, post-merger, have the ability to engage in anti-competitive input foreclosure in respect of its liquefaction capacity in the Atlantic basin.

- (102) In addition, the Commission notes that the ability of the merged entity to engage in input foreclosure is in this respect largely pre-existent to the proposed transaction, given that it will only acquire an additional veto right over [...] as a result of the addition of the Parties' respective equity stakes therein. This would increase its upstream share of liquefaction capacity by around [10-20]% in 2014 and only by around [5-10]% by 2020⁷⁴.
- (103) At the same time, the increment in the Notifying Party's current and projected future (2020) share of the possible market(s) on which it would try to recoup foregone losses upstream⁷⁵ resulting from the proposed transaction amounts to less than [0-5]%. Accordingly, the proposed transaction is unlikely to bring about any significant change in the Notifying Party's ability and incentive to engage in input foreclosure in relation to the liquefaction capacity over which it holds a technical right of veto within the Atlantic basin.
- (104) Another reason why the Notifying Party is unlikely to, post-merger, have the ability or the incentive to engage in anti-competitive input foreclosure, is that its post-merger shares⁷⁶ of the relevant downstream markets on which it would attempt to expand sales and (eventually or immediately) increase prices amount to – at most – [10-20]%⁷⁷ (on the possible EEA and national LNG supply markets and on the various EEA gas trading hubs).⁷⁸ Accordingly, the base of sales on which the Notifying Party would enjoy increased margins is in any event highly limited, reducing its incentive to attempt any foreclosure.
- (105) What is more, the large majority of the Parties' customers and competitors that replied to the Commission's market investigation consider that the global and EEA markets for the supply of LNG are characterised by excess production, liquefaction and supply capacity (and are forecasted to remain so between now and 2020).⁷⁹ A similar majority of customers and competitors also considers that the proposed transaction will not have an impact on the price level within the EEA for LNG supplied either under long-term contracts or under short-term contracts and on a spot basis.⁸⁰ These results

⁷⁴ Form CO, Table 6.21.

⁷⁵ I.e. the markets for the wholesale supply of LNG in the EEA (or at national level) or its existing share for the trading of natural gas on hubs in the EEA (where spot LNG would be sold).

⁷⁶ The previous paragraph was about the *increment* in those market shares.

⁷⁷ Although the Notifying Party's post-merger share of the possible Spanish market for the upstream wholesale supply of LNG would have amounted to [10-20]% – which is still limited in size – this is forecasted to be limited to [5-10]% by 2017, see Form CO, Table 6.27.

⁷⁸ Except for its share of gas trades made at the Italian gas trading hub – which is still limited to [20-30]% and which hub is not exclusively dependent on regasified LNG as a source of (flexible) gas supply.

⁷⁹ Replies to Questionnaire 1 – Customers, question 25; Replies to Questionnaire 2 – Competitors, question 27.

⁸⁰ Replies to Questionnaire 1 – Customers, questions 39 and 40; Replies to Questionnaire 2 – Competitors, questions 39 and 40.

support the Commission's view that the proposed transaction is unlikely to confer upon the Notifying Party the ability and incentive to engage in anti-competitive input foreclosure in relation to its liquefaction capacity within the Atlantic basin.

(106) 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 any foreclosure concerns arising on the vertically related possible markets for the liquefaction of LNG and the upstream wholesale supply of LNG.

5.2.2. *Production, development and wholesale supply of natural gas – processing of gas in the SNS*

(107) Although this vertical relationship does not give rise to affected markets under any alternative plausible market definition, the Commission notes that the proposed transaction will bring together Shell's interest in the SEAL Bacton gas processing terminal (the 'Seal Bacton terminal')⁸¹, located in the SNS, and BG Group's interest in the Elgin Franklin gas field, located in the NNS⁸². The Commission also understands that any gas produced at any of the gas fields connected to the SEAL Bacton terminal has to be treated there before it is fit to be entered into the UK national gas grid. It furthermore understands that the SEAL pipeline connects the SEAL Bacton terminal with *inter alia* the Elgin Franklin gas field (as well as with the Shearwater gas field). Accordingly, the Commission has assessed whether the proposed transaction could give rise to concerns of vertical foreclosure – notwithstanding that it does not involve any affected markets in the North Sea.

i. View of the Notifying Party

(108) The Notifying Party considers that this vertical relationship will not give rise to any concerns of anti-competitive foreclosure, given that the combined entity would not have the incentive to foreclose. The Notifying Party submits that this is for the following reasons:

- a. The market for the production of natural gas is worldwide in geographic scope. In order for the combined entity to benefit from any foreclosure strategy at the upstream natural gas production level of the supply chain, it would therefore need to have sufficient market power in the global market for the production of natural gas. The Notifying Party submits that this is not the case, given that the Parties combined share of natural gas production worldwide in 2014 was only c. [0-5]% (with an increment of c. [0-5]).
- b. A foreclosure strategy would also mean that the combined entity would forego the fees payable by third parties to use the SEAL Bacton terminal – given the time and cost involved in setting up and operating a gas terminal, these are important to the terminal's financial viability. A foreclosure strategy would therefore only make sense if the combined entity expected to make a sufficiently large gain at the upstream level to outweigh the loss of revenues downstream. The Notifying Party submits that the combined entity

⁸¹ Shell holds a [50-60]% stake in the SEAL Bacton terminal pursuant to which it holds a veto right over decision-making there.

⁸² BG Group holds a [10-20]% interest in the Elgin Franklin gas field.

would not be able to do so in the worldwide market for the production of natural gas.

- c. The proposed transaction does not result in any change to the status quo as BG Group does not have any ownership interest in the SEAL Bacton terminal.

ii. Assessment

(109) The Commission considers that it is first of all important to note that, according to the Notifying Party, the SEAL Bacton terminal was purpose-built for the owners of the SEAL pipeline (which connects the terminal with the Elgin Franklin and Shearwater gas fields) and it is those owners that control access to the terminal in accordance with the operating provisions relating to the SEAL pipeline. [...]. Shell would not have the ability to veto any decision of the SEAL pipeline owners to enforce the terms of these contractual arrangements.⁸³ Although it is the owners of the SEAL pipeline that control access to the SEAL Bacton terminal, the Commission has assessed whether the proposed transaction would nonetheless allow the Notifying Party to foreclose access to the SEAL Bacton terminal for competing producers at the Elgin Franklin gas field, through the Parties' existing ownership interests in the SEAL pipeline.

(110) In relation to this SEAL pipeline, the Commission understands that Shell's and BG Group's existing veto rights on the allocation of capacity⁸⁴ (the Parties have respective interests in the SEAL pipeline of [10-20]% and [5-10]%) apply only to the respective portions of this pipeline that have been reserved to each of the Elgin Franklin and Shearwater gas fields.⁸⁵ Accordingly, notwithstanding that the proposed transaction would bring together Shell's interest in the SEAL Bacton terminal with the Parties' respective upstream interests in the Elgin Franklin and Shearwater gas fields, it does not involve any merger-specific change in any hypothetical ability to foreclose access to the SEAL Bacton terminal and SEAL pipeline. Indeed, the degree of vertical integration in the ownership of the various infrastructure assets together making up the individual, ring-fenced evacuation routes of the Elgin Franklin and Shearwater gas fields will be unaffected by the proposed transaction.

(111) For completeness sake, the Commission notes that, according to information provided by the Notifying Party, at the time of development of a gas field, operators thereof can choose to connect to any of the existing evacuation routes in the area and therefore from any of the five gas processing facilities currently existing within the SNS. At that stage, competition would accordingly exist between gas processing facilities and Shell cannot be said to have the ability to foreclose access thereto for new gas fields as it controls only one out of five gas processing facilities in the SNS. Finally, the SEAL Bacton terminal offers a spare capacity that significantly exceeds its total existing and forecasted annual throughput during 2013-2017 (and which amounted to more than half of total gas production in the SNS in 2014), while gas production levels in the SNS are forecasted to decline between now and 2020.⁸⁶ Also, no concerns were raised in respect

⁸³ Notifying Party's response to the Commission's request for information of 30 July 2015.

⁸⁴ [...].

⁸⁵ The SEAL pipeline is operated on a divided rights basis as between the Elgin Franklin owners ([50-60]%) and the Shearwater owners ([40-50]%).

⁸⁶ Form CO, Table 6.51.

of any of the Parties' oil and gas transportation and processing assets during the Commission's market investigation.

(112) 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 the combination of the Parties' oil processing and production assets in the UK North Sea (SNS).

5.2.3. Production, development and wholesale supply of natural gas – transaction processing of gas in Norway (North Sea)

(113) Similar to the previous section, although this vertical relationship does not give rise to affected markets under any alternative plausible market definition, the Commission notes that the proposed transaction will combine Shell's interest in the SEGAL St Fergus gas processing terminal and the FLAGS gas pipeline on the one hand⁸⁷, with BG Group's interest in the Knarr gas field (which uses the aforementioned infrastructure as its evacuation route) on the other hand⁸⁸. Both are located in the Norway region of the North Sea. For that reason, the Commission has assessed whether the proposed transaction could give rise to concerns of vertical foreclosure – notwithstanding that it does not involve any affected markets in the North Sea.

i. View of the Notifying Party

(114) The Notifying Party considers that this vertical relationship will not give rise to any concerns of anti-competitive foreclosure, given that the combined entity will not have the ability to foreclose. According to the Notifying Party, this is for the following reasons:

- a. If a producer wants to evacuate gas in the UK North Sea, it has the option of linking its gas field to any of the pipelines and terminals in the region – there is therefore competition between pipelines and terminals at this stage.
- b. Once a field has chosen its evacuation route, the field owners will benefit from contractual protections. The operator and owners of the Knarr gas field entered into contractual arrangements to evacuate their gas via the FLAGS pipeline and the SEGAL St Fergus gas terminal in [...] – they will therefore be protected by these long - term contract arrangements, which the combined entity will have no ability to alter; and,
- c. The proposed transaction does not result in any change to the status quo as BG Group does not have any ownership interest in the FLAGS pipeline or the SEGAL St Fergus terminal.

ii. Assessment

(115) The Commission found that the proposed transaction does not give rise to any foreclosure concerns in respect of this vertical overlap. The existing and forecasted spare

⁸⁷ Shell holds a [50-60]% stake in the SEGAL system (which encompasses, inter alia, the FLAGS pipeline and the SEGAL St Fergus gas processing terminal), pursuant to which it has a technical right of veto over the use of capacity.

⁸⁸ BG Group holds a [40-50]% stake in the Knarr field.

capacity at the SEGAL St Fergus gas processing terminal and the FLAGS gas pipeline namely significantly exceed the existing and forecasted production levels at the Knarr gas field. Any unforeseen increases in production at the Knarr gas field that are not protected by the existing contractual arrangements between the SEGAL owners and operators and the Knarr owners and operators are therefore likely to represent only a very minor proportion of the spare capacity at the relevant evacuation infrastructure.⁸⁹ Given that this vertical relationship is furthermore largely pre-existent to the proposed transaction – the Notifying Party already has upstream interests in several gas fields connected to the SEGAL St Fergus gas processing terminal and the FLAGS gas pipeline – while the Notifying Party indicates that access requests to this infrastructure have never been refused in the last 10 years, the addition of the Knarr field does not give rise to any merger-specific change in its ability or incentive to foreclose access to the aforementioned infrastructure. Also, as mentioned in the previous section, no concerns were raised in respect of any of the Parties' oil and gas transportation and processing assets during the Commission's market investigation.

(116) 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 the combination of the Parties' oil processing and production assets in the Norway region of the North Sea.

6. CONCLUSION

(117) 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

⁸⁹ Form CO, Tables 6.54 and 6.55 as well as Annex 15.