EUROPEAN COMMISSION
DG Competition

Case M.7680 - DCC GROUP / BUTAGAZ

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 01/09/2015

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: **Case M.7680 – DCC GROUP/ BUTAGAZ**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 28 July 2015**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which DCC ENERGY, controlled by DCC group ("DCC" or the "Notifying Party", Ireland), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the undertaking BUTAGAZ S.A.S. ("Butagaz", France, together with DCC, the "Parties")[3] which is currently 100% owned by SOCIETE DES PETROLES SHELL S.A.S, ultimately owned and controlled by SHELL PETROLEUM N.V by way of purchase of shares (the "Transaction").

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 258, 07/08/2015, p.2.

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1. THE PARTIES

(2) DCC is a publicly listed company headquartered in Dublin, Ireland. It operates across four divisions: DCC TECHNOLOGY (previously SERCOM), DCC HEALTHCARE, DCC ENVIRONMENTAL, and DCC ENERGY.

(3) DCC ENERGY is active in the sale, marketing and distribution of oil and liquid petroleum gas ("LPG") in Europe. It supplies heating oil, transport fuels and fuel oils including LPG to domestic, commercial, agricultural and industrial customers, as well as on a wholesale level to smaller distributors, in the United Kingdom, Ireland, Denmark, Sweden, Austria, Norway, Belgium, the Netherlands, and Germany. DCC ENERGY is also active in the sale of fuel cards in various European countries.

(4) In France, DCC ENERGY just recently entered the market for the retail distribution of motor fuel through the acquisition of various assets formerly operated by ESSO SAF.[4] Prior to that transaction, DCC ENERGY had not been active in France, with the very limited exception of its subsidiary BENEGAS - based in the Netherlands - which achieves non-significant LPG sales to a limited number of industrial clients in France.

(5) BUTAGAZ is active in the sale of LPG in France to both domestic and industrial customers. More particularly, it sells propane and butane in cylinders in small bulk, and in large bulk. BUTAGAZ also sells automotive LPG (used as a fuel for transportation).

2. THE OPERATION AND THE CONCENTRATION

(6) The Transaction consists in the acquisition of sole control of Butagaz by DCC through the acquisition of all the issued shares of Butagaz.

(7) The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [DCC: EUR […] million; Butagaz: EUR […] million]. Each of them has a EU-wide turnover in excess of EUR 250 million [DCC: EUR […] million; Butagaz: EUR […] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(9) The Transaction therefore has an EU dimension pursuant to article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Introduction

(10) The Transaction concerns various markets involving the distribution of LPG in France.

4 COMP/M.7508, DCC Energy / ESSO SAF, Commission decision of 12 March 2015.

4.2. Non-Retail Sales of Refined Oil Products, in particular LPG.

(11) In past decisions, the Commission has found that non-retail sales of refined oil products constitute a separate product market. Non retail sales are wholesale sales made to independent resellers, retailers not integrated upstream, large industrial customers and to commercial users. The Commission has also found it appropriate to segment the market for non-retail sales of refined oil products by type of product. Therefore, it has regarded the non-retail sales of different types of refined oil products (i.e. unleaded gasoline, diesel, domestic heating oil, heavy heating oil, and LPG) as distinct product markets.[5]

(12) With particular reference to LPG, the Commission has considered a further segmentation of the market for the non-retail sales of LPG into two distinct market segments, namely (i) LPG sold in bulk and (ii) LPG sold in cylinders, ultimately leaving this question open.[6] In addition to the above two plausible product markets, in a recent decision the French Competition Authority also identified a plausible market for (iii) the non-retail sales of LPG autogas (automotive LPG).[7]

(13) The Notifying Party agrees with the above segmentations of the product market definition and submits that indeed LPG autogas cannot be used for non-automotive purposes. However it claims that this question can ultimately be left open.[8]

(14) As to the geographic scope of the market, the Commission has considered in previous decisions that the relevant markets for the non-retail sales of refined oil products are national or sub-national in scope.[9] […]. In relation to the non-retail sale of LPG, the Commission has previously explained that the relevant geographic market is likely national in scope.[10] With regard to the geographic scope of the market for the non-retail sale of automotive LPG identified by the French Competition Authority, the latter similarly concluded that this is national in scope as the majority of contracts are with large oil or retail groups and the prices are negotiated nation-wide.

(15) In any event, the exact market definition can be left open, as under none of the plausible market definitions the Transaction raises serious doubts as to its compatibility with the internal market.

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5 COMP/M.1628 – *Totalfina/Elf*, COMP/M.5005 – *Galp Energia/Exxonmobil Iberia*.

6 See, in particular, COMP/M.7161 - *Dcc Energy / Qstar Försäljning / Qstar / Card Network Solutions.* See also COMP/M.7311- *Mol/Eni Ceska/Eni Romania/Eni Slovensko*; COMP/M.5005 – G*alp Energia/Exxon Mobil Iberia*; COMP/M.3664 – *Repsol Butano / Shell Gas*; COMP/M. 5637 – *Motor Oil (Hellas) Conrinth Refineries/Shell Overseas Holdings*; COMP/M.1628 *TotalFina/Elf*, and COMP/M.7473 *Zentraleuropa Lpg Holding/ Total Hungaria*.

7 Decision 15-DCC-53 UGI/Totalgaz, paragraph 33.

8 Short form CO, paragraph 79-80.

9 COMP/M.3291 *Preem/Skandinaviska Raffinader*; COMP/M.3375 *Statoil / SDS*; COMP/M.3543 *PKN Orlen / Unipetrol*; COMP/M.3516 *Repsol / Shell Portugal*; COMP/M.4208 *Petroplus / European Petroleum Holdings*; COMP/M.4545 *Statoil / Hydro* ; COMP/M.5005 *Galp Energia / ExxonMobil Iberia*; COMP/M.5846 *Shell / Cosan / JV.*

10 COMP/M.5637 – Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings, para. 47; M.3664 – Repsol Butano / Shell Gas (LPG).

4.3. Retail Sales of Motor Fuels (in particular automotive LPG) in France

(16) In past decisions, the Commission found that the retail supply of motor fuels constitutes a separate product market which exclusively relates to forecourt sales. This encompasses sales made at all service stations, both branded and unbranded, in- and outside an integrated retail network.[11]

(17) As regards the aggregation of diesel, gasoline and automotive LPG into an overall motor fuels market, the Commission previously noted that, although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), diesel and gasoline are always available at the distribution level at the same point of sales and therefore substitutable from a supply-side perspective.[12] However, as regards the retail sales of automotive LPG, the Commission did consider whether this could constitute a separate relevant product market, being distinct from the sales of gasoline and diesel, ultimately however leaving this question open.[13]

(18) In past decisions, the Commission has also considered a segmentation of the overall market for the retail sales of motor fuels into motorway and non-motorway sales. This segmentation was however left open.[14]

(19) In previous Commission decisions, the geographic market for retail sales of motor fuels was generally defined as national in scope. However, in some cases the existence of a strong local element of the retail fuel market was highlighted, as vehicle owners usually resort to service stations in their vicinity.

(20) In the case at hand, the exact definition 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.

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11 COMP/M.6167 *RWA / OMV Warme*; COMP/M.5637 *Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings*; COMP/M.5781 *Total Holdings Europe SAS / ERG SpA / JV*; COMP/M.5629 *Normeston / MOL / Met JV*; COMP/M.5846 *Shell / Cosan / JV.*

12 See COMP/M.3291 *Preem / Skandinaviska Raffinaderi* (2003).

13 See COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008), COMP/M.7161 - *Dcc Energy / Qstar Försäljning / Qstar / Card Network Solutions*.

14 This was based on the different competitive conditions characterising a motorway. First, the demand is captive, as motorists travelling on motorways are generally not familiar with the region in which they travel and thus reluctant to leave the motorway to buy fuel in a service station located off the motorway. Second, motorists choose to travel on motorways for reasons of speed, and are thus not inclined to waste time in refuelling. The payment of a toll is another factor which further discourages motorists to exit motorways and buy fuel on off-motorway stations. Finally, a strong indication that motorways can constitute distinct markets lies in the fact that pump prices on motorways are generally higher than prices on ordinary routes; COMP/M.5637 *Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings* (2010); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008); COMP/M.1383 *Exxon/Mobil*, COMP/M.1628 – *TotalFina/Elf*.

5. COMPETITIVE ASSESSMENT

5.1. Introduction and analysis regarding horizontal aspects, in particular of the market for non-retail sales of LPG.

(21) Horizontally, the Parties activities overlap only with respect to the non-retail sales of bulk LPG in France.[15] On this market, DCC achieved only insignificant sales via its subsidiary Benegas. In this market, the Parties' combined market share would not exceed [10-20]%, and the increment brought about by the Transaction would be limited to less than [0-5]% under any plausible market definition.

(22) DCC does not sell LPG in any other format in France. In light of the above, the proposed Transaction will not give rise to horizontally reportable markets neither on the plausible market for the non-retail sale of LPG in bottles[16] nor on the plausible market for the non-retail sale of LPG autogas,[17] irrespective of the precise product and geographic market definition.

(23) Furthermore, contrary to DCC (see point 31 below), Butagaz does not have any retail sales of automotive LPG, so the Parties' activities do not horizontally overlap on this possible market, either.

(24) Therefore, the Transaction does not appear to give rise to any horizontally affected markets as defined in the Commission Implementing Regulation (EC) No 139/2004.[18]

(25) Accordingly, the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of possible non-coordinated horizontal effects occurring on the market for the non-retail sales of bulk LPG in France.

5.2. Vertical relationships

(26) Some competitors to Butagaz voiced concerns about the possible detrimental effect of the Transaction on access to supply of LPG in the North of France as well as about a possible customer foreclosure scenario occurring on the downstream market for the retail sales of automotive LPG in France. In particular because of these concerns, the Commission has further investigated the possible competitive effects of the transaction.

(27) As regards vertical relations, the only merger specific link generated by the transaction is between the upstream plausible market for the non-retail sale of automotive LPG where Butagaz is active and the downstream plausible market for the retail sale of motor fuels where DCC is active.[19] If the relevant downstream market was to be further segmented in the sale of automotive LPG, the Transaction would not give

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15 Plausible sub-market i) referred to in paragraph 12 above.

16 Plausible sub-market ii) referred to in paragraph 12 above.

17 Plausible sub-market iii) referred to in paragraph 12 above.

18 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.

19 DCC contests this, see below paragraph 32.

rise to any vertically reportable market. In fact, as explained below,[20] DCC is active on the retail sale of motor fuels but not in the retail sale of automotive LPG.

(28) The Commission takes the view that the narrowest possible upstream reportable market in this case is the market for the non-retail sale of LPG autogas (see also, in this sense, the recent decision of the French Competition Authority mentioned above). Hence, the assessment will be carried out on that basis.

(29) In the course of the market investigation, competitors voiced concerns that post Transaction:

a. the combined entity may foreclose access to the downstream market for the retail sale of motor fuels to Butagaz's competing suppliers of automotive LPG; and,

b. the economic conditions of access for Butagaz's competitors to LPG (either from refineries or import terminals) in the north of France may be deteriorated, thereby hampering their ability to compete in the sale of LPG (bottles, bulk and automotive) at the non-retail level.

5.2.1. Vertical non-coordinated effects: non retail sales of automotive LPG – retail sales of automotive fuels

(30) Regarding the downstream market, DCC is active on the market for the retail sales of automotive fuels via the network of petrol stations operated under the Esso brand ("Esso Petrol Stations"). These petrol stations are located both on motorways ([…] petrol stations) and off motorways ([…] petrol stations). Automotive LPG is currently sold only at Esso Petrol Stations located on motorways.

(31) On the possible market for the retail sale of motor fuels, DCC holds an estimated market share of [0-5]%. If the relevant market was to be segmented into on-motorway and off-motorway, the estimated market share of DCC for the retail sale of motor fuels would be [10-20]% on-motorway and [0-5]% off-motorway. On a possible market for the retail sale of automotive LPG in France, the estimated market share of ESSO branded stations operated by ROC FRANCE under the agreement with CERTAS account for ca. [0-5]% in volume.[21]

(32) The Notifying Party claims that it is not active itself on the market for the retail sale of automotive LPG. This is because, unlike other motor fuels which are distributed at Esso Petrol Stations by ROC France on behalf of DCC under an agency relationship, automotive LPG is distributed by ROC France on its own behalf (ROC France sets the price independently and retains the profits), under the following contractual arrangements:

a. According to an agreement entered into by ESSO SAF (as the lessor of ROC FRANCE) with PRIMAGAZ, ESSO SAF granted an exclusive right to PRIMAGAZ on the supply of automotive LPG to ROC FRANCE. This agreement has been transferred to DCC;

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20 See paragraph 32 below.

21 See below paragraph 37.

b. Furthermore, according to an agreement entered into by ROC FRANCE with PRIMAGAZ, PRIMAGAZ sells automotive LPG to ROC FRANCE, which in turn sells it to motorists.

(33) However, even if one were to consider that DCC is not itself active on the (possible) market for the retail sale of automotive LPG, DCC nevertheless (through its subsidiary CERTAS) has the exclusive right to choose the supplier of automotive LPG sold at Esso Petrol Stations in France. The contract currently in place with Primagaz for the supply of automotive LPG is due to expire in […]. In light of DCC's right to unilaterally decide the supplier of automotive LPG, the Commission takes the view that the contractual arrangement with ROC France does not preclude the Notifying Party to, post-transaction, engage in foreclosure behaviour.

(34) In this respect, a competitor indicated that following the Transaction the combined entity may have the ability and incentive to foreclose access to the downstream market for the retail sale of motor fuels to competitors of Butagaz (customer foreclosure). The concern is that the combined entity would stop sourcing automotive LPG from Primagaz but instead would source it from Butagaz.

(35) The Notifying Party takes the view that the merged entity will neither have the ability to foreclose access to the downstream market for retail sales of automotive LPG nor would it have the incentive to engage in such foreclosure behaviour. In particular, according to the Notifying Party it does not have any degree of market power on the downstream market for the retail sales of motor fuels, and thus the merged entity will not have the ability to foreclose access to the downstream market.[22]

(36) The Commission takes the view that, following the Transaction, the merged entity will not have the ability to foreclose access to the downstream market to Butagaz' competitors.

(37) First, the Commission considers that the combined entity will not have any degree of market power on the downstream market irrespective of the exact scope of the relevant market and would hence not be able to significantly restrict access to such market. As stated above,[23] the combined entity's market share on a plausible market for the retail sales of motor fuels will be limited to [0-5]%. Even when limiting the perimeter of the relevant market to on-motorway sales, the combined entity will still have a limited market share ([10-20]%). Moreover, on the possible market for the retail sales of automotive LPG only, the ESSO branded stations operated by ROC FRANCE under the agreement with CERTAS account for ca. [0-5]% only of the total automotive LPG (being […] kT of a total estimated market of 89 kT in 2014) sold at the retail level in France.

(38) Second, there appear to be sufficient alternatives on the downstream market for Butagaz' competitors. On the market for the retail sale of motor fuels, in fact, there are a number of non-vertically integrated players, including large supermarket chains such as Auchan, Casino, Cora, Carrefour, Hyper U, Intermarché, and Leclerc selling automotive LPG at retail level. A number of these potential customers on the downstream market, such as ENI ([…] petrol stations, contract expiring in […]) and Shell ([…] petrol

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22 Answer to the case team questions of 18 August 2015, reply to point 1.

23 See paragraph 31 above.

stations, contract expiring in […]), are currently supplied automotive LPG at non-retail level by Butagaz under contracts due to expire in the near future.

(39) With regard to such non-vertically integrated players, it thus appears that competition will be open for the supply of automotive LPG (in particular with regard to ENI and Shell, following the expiry of the reseller agreement currently in place). Therefore, the Commission expects that post Transaction Butagaz' competitors will have access to a sufficiently large customer base to compete for in the near future.

(40) Third, even if the merged entity was to attempt such a foreclosure, the Commission takes the view that this would not have such an impact on Primagaz as to substantially affect its cost structure. In fact, even if following the Transaction, Primagaz were to lose the contract for the non-retail supply of automotive LPG to the Esso Petrol Stations, it would only marginally reduce Primagaz' total sales (and therefore demand) of LPG. This is because Primagaz' sales of automotive LPG through the Esso Petrol Stations seem to constitute less than [0-5]% of the total volume of LPG sold by Primagaz.[24]

(41) In light of the above, the Commission takes the view that the combined entity will not have the ability to foreclose access to customers for Butagaz' competitors on the market for the non-retail sale of automotive LPG in France. Therefore, the Commission considers that the 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 retail sale of motor fuels and the upstream wholesale supply of automotive LPG.

5.2.2. Vertical non-coordinated effects: access to primary import depots for LPG – non retail sales of automotive LPG

(42) In the course of the market investigation, some competitors voiced concerns as to the possible effect of the Transaction on access to sources of LPG for Butagaz' competitors on the market for the non-retail sale of automotive LPG, active in the North of France. In particular, one competitor expressed concerns that following the Transaction it would potentially be foreclosed from access to LPG from the Port Jerome refinery owned by ExxonMobil, while another competitor expressed the concern that its conditions of access to imported LPG at the Norgal import terminal (close to Le Havre) may be deteriorated.

(43) In the north of France LPG (whether automotive LPG, LPG sold in bulk or in bottles) can be sourced from two main locations: the Norgal import terminal[25] and the Port Jérôme refinery owned by ExxonMobil.[26]

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24 According to the Decision n° 15-DCC-53 of 15 May 2015 (the "FCA Decision"), Primagaz has a market share of [10-20]% in the market for the sale of bulk LPG in France (see FCA Decision, recital 61); [10-20]% in the market for the sale of LPG cylinders in France (see FCA Decision, recital 141); and (3) [5-10]% in the market for the sale of automotive LPG in France (see FCA Decision, recital 156). Considering that the total size of the market in 2014 in France was composed of 1,249,063 tons of bulk LPG, 451,445 tons of bottled LPG, and 91,246 tons of automotive LPG (source: CFBP), this means that Primagaz sold between 175,000 tons and 349,000 tons of LPG in France in 2014. Considering that Esso branded stations' retail sales of automotive LPG only accounted for […] tons in 2014, this means that Esso stations accounted for less than 1% of Primagaz's sales of LPG in 2014.

25 Norgal is a primary import depot and is also connected by pipeline to a refinery currently owned by Total.

(44) Norgal is a GIE (*groupement d'intérêt économique*) operating storage facilities for LPG volumes imported into France by sea at the seaport of Le Havre. Norgal's total storage capacity amounts to 90,000 m3. In the context of the French Competition Authority's Decision n° 15-DCC-53 UGI/Totalgaz, UGI committed to sell to Butagaz a stake in Norgal. Butagaz will thereby become the third shareholder in the Norgal depot, together with UGI and Vitogaz. In particular, UGI and Butagaz entered into two letters of intent relating to the acquisition by Butagaz of a 18% stake in Norgal and Butagaz has been approved by the French Competition Authority as a suitable buyer. Following this acquisition, the shareholding in Norgal will be as follows:

a. UGI France: 52.66%;

b. Vitogaz: 20.94%;

c. Butagaz: 18%;

d. Finagaz: 8.40%.

(45) According to the information collected in the course of the market investigation, usually ExxonMobil does not sell LPG out of the Port Jérôme refinery to third parties, with the exception of its sales to Primagaz.[27]

(46) The concerns voiced in the course of the market investigation regard mainly the possibility that post Transaction the merged entity may want to obtain exclusive access to supply out of the Port Jérôme refinery. The two main competitive concerns were the following:

a. Butagaz would no longer have the incentive to import LPG at the Norgal import terminal, thus hampering Vitogaz' (and possibly Finagaz') possibility to source LPG at competitive conditions. In fact, as also indicated in decision 15-DCC-53 UGI/Totalgaz, Vitogaz alone does not have enough storage capacity in Norgal to be able to import LPG at the lowest cost per ton, i.e. using very large gas carriers. On the contrary, if Butagaz and Vitogaz were to jointly purchase LPG at Norgal, they would be able to import it via such very large gas carriers thus lowering the price per ton at which they could source LPG.

b. Primagaz would be foreclosed from access to LPG at Port Jérôme and would not be in a position to import LPG at Norgal as all the shareholders at Norgal fully use the available storage capacity to satisfy their needs of LPG. As a result, Primagaz's ability to compete in the north of France would be hampered.

(47) The Notifying Party submits that these concerns are not well-founded. In particular, the Transaction will not change ExxonMobil's incentives in a way that would lead it to supply Butagaz on an exclusive basis from Port Jérôme instead of supplying Primagaz. On the one hand, the Transaction will not significantly increase Butagaz' needs of LPG. Also, Primagaz' purchases of LPG should not decline significantly post Transaction.

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26 Minutes of the conference call held with a competitor, 13 August 2015, para 9.

27 Minutes of the conference call held with a competitor, 13 August 2015, para 10.

Moreover, the Notifying Party claims that sourcing LPG from Port Jérôme instead of Norgal would entail less favourable economic terms of purchase for Butagaz than sourcing from Norgal; and that doing so would require using a pipeline owned by Primagaz to fill the trucks.[28]

(48) The Notifying Party also claims that following the acquisition of the 18% stake in Norgal referred above, it has all the incentive to source LPG from that source and not from other sources, such as Port Jérôme.

(49) Finally, the Notifying Party claims that currently it does not plan to start any negotiation with ExxonMobil for the supply of LPG out of Port Jérôme. The Notifying Party states that it is currently negotiating with UGI France an agreement to purchase butane (around […] kT) and propane (around […]kT) from Norgal, […] in addition to the quantities that the 18% share it will acquire (due to the acquisition of Butagaz) will grant it.

(50) The Commission takes the view that the concerns voiced by the respondents to the market investigation are unfounded.

(51) Regarding, in particular, concern "b" identified above first, the Commission observes that neither of the Parties is active on the market for the ex-refinery sales of LPG (or any other oil product) in the EEA. Hence, the proposed transaction does not give rise to any vertical link between the market for the non-retail sales of LPG and the market for the ex-refinery sales thereof, which could potentially give rise to an input foreclosure scenario as described above.

(52) Therefore, the Commission takes the view that the alleged possible future foreclosure of Primagaz from access to LPG supplies at Port Jérôme is not specific to the Transaction. Indeed, the decision on whether to maintain the contract in place with Primagaz for the supply of LPG out of the Port Jérôme refinery depends exclusively on ExxonMobil, which company is not involved in any way in this Transaction.

(53) Second, the Commission considers that the Transaction will not confer an ability upon the merged entity to indirectly affect the supply conditions on the upstream market for the ex-refinery sale of LPG, by attempting to alter Exxon Mobil’s incentive to supply Primagaz through, in turn, having the Esso Petrol Stations switch their sourcing of LPG to Butagaz. This is for the following reasons:

(54) In fact, even in the event Butagaz were to acquire the LPG non-retail supply contract for the Esso Petrol Stations, the Transaction would not substantially change the potential demand volumes of the various (potential) customers of Exxon Mobil for automotive LPG in the North of France, leaving the latter's incentive to supply Primagaz unaffected. This is because:

i. Even if following the Transaction, Primagaz were to lose the contract for the non-retail supply of automotive LPG to the Esso Petrol Stations to Butagaz, it would only marginally reduce Primagaz’ total sales (and therefore demand) of LPG. As explained in recital 40 above, this is because Primagaz’ sales of automotive LPG through the

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28 Answer to the case team questions of 18 August 2015, reply to point 3.

Esso Petrol Stations constitute less than [0-5]% of the total volume of LPG sold by Primagaz.

ii. Regarding Butagaz' demand for LPG, even if all Esso Petrol Stations which are currently supplying automotive LPG (all located on motorways) would sell Butagaz' automotive LPG, this would increase Butagaz' total sales of LPG by not more than [0-5]%.[29]

(55) Finally, regarding, in particular, concern "a" identified above (i.e. the concern that Butagaz would no longer have the incentive to import LPG at the Norgal import terminal, thus hampering Vitogaz' (and possibly Finagaz') possibility to source LPG at competitive conditions), Butagaz' incentives appear unlikely to significantly change as a result of the Transaction. In particular, even if all of the Esso Petrol Stations located on-motorways would sell Butagaz' automotive LPG, this would increase Butagaz' total sales of LPG by around [0-5]%.[30] As explained above, the Commission considers that the Transaction does not change in any way the ability of Butagaz to compete with Primagaz for the LPG supply contract with Exxon Mobil for the supply of LPG at the Port Jérôme refinery. Accordingly, any ability and incentive that Butagaz could potentially – if at all – have to cease sourcing LPG at the Norgal import terminal in favour of the Port Jérôme refinery appears largely unaffected by the Transaction.

(56) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of any foreclosure concerns relating to access to import depots and refineries in the North of France.

6. CONCLUSION

(57) 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

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29 Estimation based on the Esso branded stations' retail sales of automotive LPG of […] tons and on Butagaz' total sales of LPG.

30 Estimation based on the Esso branded stations' retail sales of automotive LPG of […] tons and on Butagaz' total sales of LPG.