



EUROPEAN COMMISSION
DG Competition

***Case M.7965 - WORLD FUEL SERVICES CORPORATION
/ CERTAIN AVIATION FUELS ASSETS BELONGING TO
EXXON***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/06/2016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE

To the Notifying Party

Dear Sir/Madam,

**Subject: Case M.7965 – World Fuel Services Corporation / Certain aviation fuels assets belonging to Exxon
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 24 May 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which World Fuel Services Corporation ("WFS") will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation of the aviation fuels business ("the Business") belonging to ExxonMobil Corporation ("Exxon") at certain airports worldwide, including 25 airports in the EEA ("the Transaction").³ WFS is designated hereinafter as the "Notifying Party" and both WFS and the Business as "the Parties".

1. THE PARTIES

(2) WFS provides aviation, marine and ground transportation fuel products and related services worldwide. Its main business activity is supplying fuels under the reseller business model.

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 195, 2.6.2016, p. 9.

- (3) Exxon's main business is energy, involving, among other things, exploration, production and sale of crude oil, natural gas and petroleum products.
- (4) The Business comprises Exxon's activities as into-plane supplier of aviation fuel at 25 airports in the EEA: Bordeaux, Nice, Paris-Le Bourget, Anklam, Berlin Tegel, Bremen, Cologne, Dresden, Dusseldorf, Frankfurt, Leipzig, Muenster, Naples, Olbia Costasmeralda, Alghero Fertilia, Catania Fontanarossa, Milan Linate, Palermo Punta Raisi, Rome Fiumicino, Liverpool, Birmingham, Manchester, Bournemouth, Luton and Southampton (the "Relevant Airports").

2. THE OPERATION AND CONCENTRATION

- (5) WFS will acquire sole control over the Business by way of purchase of assets, therefore the Transaction constitutes a concentration according to Article 3(1)(b) of the Merger Regulation. The Transaction does not include any of Exxon's upstream activities in the refining and supply/transportation of aviation fuel to the Relevant Airports, nor does it include Exxon's downstream reseller business which will remain with the seller.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (WFS: EUR 32 969 million; the Business [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (WFS: [...]; the Business [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Introduction

- (8) There are three types of suppliers providing aviation fuels at airports, namely, into-plane suppliers, throughputters and resellers.
- (9) Into-plane suppliers typically supply the largest quantities of aviation fuels to aviation customers and other smaller suppliers active at the airport. They usually purchase fuel ex-refinery or ex-import terminal. At the airports, into-plane suppliers have direct access to the distribution infrastructure themselves or through joint-ventures in which they are shareholders, on the basis of a concession agreement entered into with the airport operator.
- (10) Throughputters supply aviation fuels to aviation customers and resellers. Like into-plane suppliers, they usually purchase fuel ex-refinery or ex-import terminal. However, throughputters do not control fuelling infrastructure at the airport. Instead, they have an agreement with into-plane suppliers to use their on-airport field storage facility and into-plane supply services.

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

- (11) Resellers supply aviation fuels to various customers at the airport. They usually acquire fuel "at wingtip", i.e. once it has passed through the infrastructure of the airport and is readily available to be supplied to the customers. Subsequently, as the fuel is delivered to the aircraft, under a contract between the reseller and the end customer, the reseller re-sells the fuel to the end customer. Resellers have no physical role in the delivery of the aviation fuel at the airport, which is undertaken by a throughputter or into-plane supplier on their behalf.
- (12) Customers purchasing aviation fuels at the Relevant Airports can also be broken down into different categories:
- a. scheduled aviation customers are airlines operating scheduled air services and scheduled air transport operations. Large airlines passenger services and most air freight services are included in this category; and
 - b. general aviation customers operate mainly non-scheduled air transport. They include private and corporate aircraft, flight schools, air ambulances and aerial fire-fighters.
- (13) The Business is active as an into-plane supplier at all of the affected airports. WFS is active as a reseller at the majority of the airports and as a throughputter in the airport of Bremen.

4.2. Product market definition

4.2.1. The Commission's prior practice

- (14) In previous decisions, the Commission has defined a market for the retail supply of aviation fuels (or into-plane supply) consisting of the supply of aviation fuels at individual airports under a contract between suppliers active in that airport and the airlines. Fuel is supplied based on arrangements with servicing companies that operate airport fuel infrastructure.⁵

4.2.2. The Notifying Party's view

- (15) The Notifying Party agrees that there is a market for the retail supply of aviation fuels. However, it claims that the market should be further segmented based on the different types of suppliers that are active at the airport. The Notifying Party considers that into-plane suppliers and throughputters would belong to the same market given that they own the fuel and have access to airport infrastructure, whereas resellers would belong to a different product market since they only acquire title to the fuel at wingtip and do not have access to infrastructure.
- (16) The Notifying Party also argues that resellers supply different types of customers from into-plane suppliers and throughputters: while the latter supply mainly scheduled aviation customers, resellers' focus is on general aviation customers. According to the Notifying Party, scheduled aviation customers use the services of resellers only for diverted flights and in cases when they are not deemed creditworthy by into-plane suppliers/throughputters. Furthermore, according to the

⁵ Case No. COMP/M.3110 – OMV/BP (“Southern German Package”) and Case No COMP/M.7387 - BP/ Statoil fuel and retail aviation.

Notifying Party, into-plane suppliers and throughputters make their sales based on contracts awarded through tender procedures, whereas resellers sell mostly through aviation fuel cards and one-off contracts.⁶

4.2.3. *The results of the market investigation and the Commission's assessment*

- (17) The market investigation revealed a further segmentation is possible between into-plane suppliers and throughputters on the one hand, and resellers on the other hand, as suggested by the Notifying Party.
- (18) Most competitors noted that resellers operate under a different business model from into-plane suppliers/throughputters and that they do not focus on the same customer groups.⁷
- (19) In terms of infrastructure, into-plane suppliers are fully integrated players acquiring fuel ex-refinery and managing facilities at the airport. They control every stage of the process, from the acquisition of fuel until delivery to the customer's aircraft. They are present at the airports and operate airport infrastructure under agreements with the airport operator granting access and use of airport ground and facilities. While throughputters do not control the airport infrastructure themselves, they use it on the basis of a service agreement with into-plane suppliers. Like the latter, they are vertically integrated in that they source the fuel at refinery or import terminal and they retain ownership of it until it is delivered to their customers.
- (20) Resellers do not own or operate any infrastructure at the airport and only acquire ownership of the fuel at wingtip. They operate under an agreement with the into-plane supplier according to which into-plane suppliers deliver the fuel to resellers' customers on their behalf. As such and because they are not directly present they do not need to be authorised by the airport operator.
- (21) During the market investigation both scheduled aviation and general aviation customers indicated that at a first stage they invite to their tender procedures all the major suppliers active at the airport.⁸ The tenders are usually organised annually and contracts are awarded on an airport-by-airport basis.⁹
- (22) The majority of customers also indicated that the main criterion for selecting the supplier is price.¹⁰ Some of them further explained that because into-plane suppliers and throughputters source the fuel ex-refinery and operate the fuel farm (e.g. storage, supply facilities, fuelling vehicles etc.) at a given airport they are able

⁶ Form CO, paragraph 6.1.49. Aviation Fuel Cards are used as proof of identity and enable a customer to pay for aviation fuel in person or over the phone, as well as to purchase other services from airport services providers in addition to aviation fuel.

⁷ Non-confidential replies to questionnaire Q1 Competitors – question 9. Non-confidential minutes of a conference call with a competitor, 26 May 2016.

⁸ Non-confidential minutes of a conference calls with customers, 1 June 2016 and 8 June 2016. Non-confidential replies to questionnaire Q2 Customers – question 10.

⁹ Non-confidential replies to questionnaire Q2 Customers – questions 7 and 10.1.

¹⁰ Non-confidential replies to questionnaire Q2 Customers – question 8. See also Non-confidential minutes of the call with a customer, 1 June 2016.

to offer more competitive prices.¹¹ Resellers usually source their aviation fuels from into-plane suppliers or throughputters therefore their offering is not as competitive.

- (23) However, into-plane suppliers and throughputters focus on scheduled aviation customers, to whom they sell large volumes of fuel, based on yearly contracts awarded through tenders.¹² While into-plane suppliers and throughputters also sometimes supply general aviation customers, these constitute a marginal part of their sales. General aviation customers procure smaller volumes and do not offer the same financial guarantees as scheduled aviation customers and are thus not as attractive to into-plane suppliers. Moreover, into-plane suppliers and throughputters generally do not have the specialized resources and ability necessary to serve these customers (credit risk assessment capacity, administrative resources to deal with numerous small customers etc.). For this reason, even though into-plane suppliers and throughputters are able to supply the fuel itself at a lower price, they are not as competitive in respect of the other costs associated with supplying general aviation customers. A large into-plane supplier explains that "[it] does not focus on these small customers because such activity requires a lot of work, people, administrative activities, etc. and those customers represent very small volumes, therefore it is not its main interest. [It] prefers having contact with resellers than with general aviation directly."¹³ This is confirmed by a reseller competing with WFS, which states that "*the reasons why general aviation customers prefer to work with resellers are that oil companies' size limits their ability to contract with customers buying only small volumes of fuel, or they perceive it as not worth their while to do so, or do not wish to provide credit to such customers.*"¹⁴
- (24) Resellers focus more on general aviation customers.¹⁵ When they sell to scheduled aviation customers, it is mainly in case of ad-hoc or diverted flights, or of customers with high credit risk. While resellers can participate in tenders organised by scheduled aviation customers for large volumes of fuel, they are not as competitive as into-plane suppliers and throughputters, from whom they source the fuel.¹⁶ Resellers make sales mainly on an ad-hoc basis¹⁷ and through aviation fuel cards,¹⁸ which have the advantages of conferring customers more flexibility as they allow fuelling without the need to conclude a contract for a specific location, time and fuel quantity in advance. As one airline explained "*the fuel card is too*

¹¹ Non-confidential minutes of a conference call with a customer, 8 June 2016.

¹² Non-confidential replies to Questionnaires to Competitors question 9.

¹³ Non-confidential minutes of a conference call with a competitor, 27 May 2016

¹⁴ Non-confidential minutes of a conference call with a competitor, 27 May 2016

¹⁵ Non-confidential replies to Questionnaires to Competitors question 9.

¹⁶ Non-confidential minutes of conference calls with customers, 26 May 2016, 1 and 8 June 2016.

¹⁷ Non-confidential minutes of a conference call with a competitor, 26 May 2016.

¹⁸ For instance, [70-80]% of all WFS's customers (and [90-100]% of its general aviation customers) at the relevant airports purchase fuel through aviation fuel cards. Parties' reply to the Commission's request for information of 6 June 2016. See also Non-confidential replies to Questionnaires to Competitors question 9.

expensive. The fuel card is interesting only to general aviation companies that have higher prices and differentials. Scheduled airlines do not use fuel cards."¹⁹ This is confirmed also by an into-plane supplier: "*General aviation customers do not need significant amounts of fuel and their demand is generally ad-hoc. They also have higher credit risk. General aviation customers buy fuel mainly through fuel cards. Scheduled aviation customers contract on an annual basis, lift on a regular basis, and have good credit positions. On the contrary general aviation customers use aviation fuel cards which [our company] does not provide.*"²⁰

- (25) Resellers also require less stringent credit conditions from customers than into-plane suppliers and throughputters. One of the competitors explained that "*there is nothing to prevent Resellers from bidding for scheduled aviation contracts, but their strength is in managing risk (and in supplying general aviation customers therefore)*".²¹
- (26) For these reasons, the Commission considers that, in respect of the airports affected by the Transaction and analysed in the market investigation, resellers belong to a different relevant product market than into-plane suppliers and throughputters.

4.3. Geographic market definition

4.3.1. The Commission's prior practice

- (27) In previous Commission decisions, the Commission concluded that the geographic scope of the market for the retail supply of aviation fuels is limited to each specific airport.²²

4.3.2. The Notifying Party's view

- (28) The Notifying Party, for the purpose of this notification, agrees with the Commission's precedents in which the Commission defined the geographic market for the retail supply of aviation fuel at airport level and has submitted market data on that basis.²³

4.3.3. The Commission's assessment

- (29) During the market investigation the majority of customers confirmed that they source aviation fuels on airport by airport basis and they refuse packages comprising supply offers combining several airports.²⁴ Therefore the Commission does not see any reasons to deviate from its previous decisions and considers that

¹⁹ Non-confidential minutes of a conference call with a customer, 8 June 2016

²⁰ Non-confidential minute of a conference call with a competitor, 27 May 2016

²¹ Non-confidential version of a conference call with a competitor, 27 May 2016.

²² Case No M.7387 BP/Statoil fuel and retail aviation; Case No. COMP/M.5880 – Shell / Topaz / JV; Case No. COMP/M.5422 - Statoilhydro / ST1 / ST1 Avifuels; Case No. COMP/M.5005 – GALP Energia/ExxonMobil Iberia.

²³ Form CO, paragraph 6.1.54.

²⁴ Non-confidential replies to Questionnaires to Customers question 10.3. and Non-confidential minutes of a conference call with a customer, 26 May 2016 and 8 June 2016.

the relevant geographic market definition for both the into-plane supplier/throughputter market and the reseller market is at airport level.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal effects

5.1.1. Affected markets

(30) Considering that resellers belong to a separate relevant market from into-plane suppliers and throughputters, the Parties' activities give rise to a horizontal overlap in the airport of Bremen where WFS acts as a throughputter.

5.1.2. The Notifying Party's view

(31) The Notifying Party submits that the Transaction will not raise any competition concerns in relation to the Bremen airports. The Notifying Party argues that other into-plane suppliers/throughputters, such as BP and Total, are present in Bremen and will still effectively compete. Moreover, any additional supplier wishing to enter Bremen airport has no restriction in doing so given that Bremen is an "open-access" airport, where entry of new suppliers is granted by the airport operator. Finally, the Notifying Party points out that in view of the limited market share of WFS as a throughputter, the proposed Transaction will not affect competition at the airport.²⁵

5.1.3. The Commission's assessment

(32) The Business has a market share of [90-100]% of the into-plane supplier/throughputter market at Bremen airport, while WFS accounts for [0-5]%. Although the Business has a strong position on this market, the increment brought about by WFS is very small. BP and Total are also active as throughputters, each with [0-5]% of the market, and Shell has recently signed a throughput agreement to become the fourth throughputter at this airport.

(33) Bremen is an "open access" airport, which means that the into-plane supplier at this airport is obliged to give access to its infrastructure to any throughputters that demand it, at prices set by the airport operator. This implies that throughputters have low barriers to expanding their supply of aviation fuel, as confirmed also in the market investigation, or to entering the market, as suggested also by the fact that Shell is now preparing to enter.²⁶

(34) For these reasons, the Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market.

²⁵ Form CO, paragraph 7.4.19.

²⁶ Non-confidential minutes of the call with the airport operator, 7 June 2016.

5.2. Non-horizontal effects

5.2.1. Affected markets

(35) The Transaction would give rise to 12 vertically affected airports, namely Bordeaux, Nice, Paris Le Bourget, Bremen, Muenster, Alghero Fertilia, Olbia Costasmeralda, Palermo Punta Raisi, Birmingham, Bournemouth, Luton and Southampton.

5.2.2. The Notifying Party's view

(36) The Notifying Party submits that it will have no different ability or incentive to foreclose competing resellers post-Transaction since: (i) as in the case of the Business, it will have an incentive to maximise the utilisation of its facilities; (ii) WFS already operates as both an into-plane supplier and a reseller at other airports in the EU and worldwide; (iii) airport operators (which grant access to into-plane suppliers through concession agreements) have power over it; (iv) resellers operate over a wide network of airports so, if they were foreclosed by WFS at the airports where it is the only into-plane supplier, they could retaliate against at other airports where alternative suppliers exist.

5.2.3. The Commission's assessment

(37) On the upstream market, there are generally a limited number of providers, reflecting the economies of scale that characterise this market. The Business is the sole into-plane supplier at Alghero Fertilia, Southampton, Bremen and Muenster, while at the other airports other into-plane suppliers are present. On the downstream reseller market, at each of the 12 airports, there are numerous resellers. WFS's position on this market is in the range of 10-40% at 9 of the 12 airports. At Birmingham, Bordeaux, Alghero Fertilia, WFS's market shares are [50-60]%, [50-60]% and [70-80]%, respectively.

(38) At all the 12 vertically affected airports, Exxon already operates as both an into-plane supplier and as a reseller,²⁷ thus the existence of a vertically integrated reseller pre-dates the Transaction. Therefore WFS's ability to foreclose competitors on the reseller market post-Transaction is no different from the one that the Business currently has. While WFS has higher market shares on the reseller market than Exxon currently does, which could imply a difference in the incentives to engage in foreclosure, the Commission considers that the Transaction is unlikely to result in such foreclosure of competitors on the downstream market at any of the affected airports.

(39) At Bordeaux, Nice, Paris Le Bourget, Olbia Costasmeralda and Birmingham airports, the Business has a market share of less than [30-40]% on the upstream market. The other into-plane suppliers are Total at Bordeaux (with a market share of [60-70]%), SASCA (a joint venture of BP and Total) at Nice (with a market share of [60-70]%), Shell and Total at Paris Le Bourget (each with a market share of [30-40]%), ENI at Olbia Costasmeralda (with a market share of [60-70]%) and Shell at Birmingham (with a market share of [60-70]%). There are no capacity

²⁷ Post-Transaction, Exxon would continue to act as reseller at the airports in question.

constraints or other barriers preventing these alternative into-plane suppliers from expanding their sales to resellers.²⁸ Therefore, the Business and, post-Transaction, WFS, is very unlikely to have the ability to engage in foreclosure of resellers.

- (40) At Palermo Punta Raisi, Luton and Bournemouth, the Business has a higher market share on the upstream market: [60-70]%, [50-60]% and [50-60]% respectively. At Palermo, there are two other into-plane suppliers active: ENI (accounting for [10-20]% of the market) and Q8 (accounting for [10-20]%). Shell is the other into-plane supplier at Luton and Bournemouth, where its market share is, respectively, [40-50]% and [50-60]%. There are no capacity constraints or other barriers preventing the alternative into-plane suppliers at these airports from supplying resellers, in particular taking into account the fact that the reseller market is relatively small compared to the total volumes sold by into-plane suppliers at these airports: at Palermo, the reseller market represents [5-10]% of total demand for aviation fuel, at Luton and Bournemouth, the shares are [10-20]% and [20-30]% respectively. Therefore, even if WFS were to attempt to foreclose competing resellers, a large part of these, if not all, would be able to source fuel from the alternative into-plane suppliers. Taking also into account the fact that [...]. For these reasons, the Commission considers it unlikely that the Business and, post-Transaction, WFS, has the ability and incentive to engage in foreclosure at these airports.
- (41) At Bremen, Muenster, Southampton and Alghero Fertilia, the Business is the only into-plane supplier of aviation fuel. As explained by the airport operators, this is due to the low number of passengers (except for Bremen, less than 2 million passengers per year) and fuel volumes sold at these airports, which would render the presence of multiple into-plane suppliers unprofitable.²⁹
- (42) At the airports of Alghero Fertilia and Southampton, there are no throughputters active, thus the Business is an upstream monopolist. Although Exxon is also active as a reseller at these airports, this has not prevented other resellers from operating and indeed growing on this market.³⁰ This shows that Exxon did not have the ability and/or incentive of foreclosing its competitors, and the Transaction will not change WFS's ability and incentive in this respect.
- (43) At the airports of Bremen and Muenster, there are throughputters active which represent an alternative source of fuel supply: BP and Total act as throughputters at Bremen (together accounting for [0-5]% of the market) and Shell is about to enter the market. At Muenster, BP held around [10-20]% of the upstream market in 2015. The airport operator at both airports imposes an obligation on the into-plane supplier to provide access to its infrastructure to throughputters on a non-discriminatory basis, at prices set by the airport operator.³¹

²⁸ Non-confidential replies to Questionnaires to Competitors question 28.

²⁹ Non-confidential minutes of conference calls with airport operators, 8 and 14 June 2016

³⁰ The combined market share of Exxon's competitors on the reseller market increased from [90-100]% to [90-100]% at Alghero in 2013-2015, and from [90-100]% to [90-100]% at Southampton over the same period.

³¹ Non-confidential minutes of a conference call with an airport operator, 7 June 2016.

- (44) While the airport operators at Southampton and Alghero do not impose throughput access obligations on the into-plane supplier, they explained that they can take measures in the event that customers would complain about the prices or conditions set by the supplier, either by imposing penalties or terminating its concession agreement early.³² Both airport operators stated that until now they have not received such complaints about the Business.³³
- (45) The airport operator's power over the into-plane supplier therefore limits its ability to use its market power on the upstream market to foreclose its competitors on the reseller market. Furthermore, the volumes sold by resellers are very small, amounting to [...] at Southampton and less than [...] at Bremen, Muenster and Alghero Fertilia, which indicates that the incentives to foreclose are also unlikely to be present.
- (46) Based on the market investigation results and the other evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market.

6. CONCLUSION

- (47) 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

³² Non-confidential minutes of a conference call with an airport operator, 14 June 2016.

³³ Non-confidential minutes of a conference call with the airport operators of 10 June 2016 and 14 June 2016.