



EUROPEAN COMMISSION
DG Competition

***Case M.8773 -
LETTERONE
HOLDINGS / BASF /
WINTERSHALL DEA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/2019

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Brussels, 28.2.2019
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

**Subject: Case M.8773 - LETTERONE / BASF / WINTERSHALL DEA
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**

Dear Sir or Madam,

- (1) On 24 January 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which LetterOne Holdings (“LetterOne”) and BASF S.E. (“BASF”) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Wintershall DEA, by way of purchase of shares in a newly created company constituting a joint venture (the “Transaction”).³ LetterOne and BASF are collectively referred to as the “Notifying Parties”.

1. THE PARTIES

- (2) **LetterOne** is a private investment holding company focusing on investments in the energy sector. LetterOne owns DEA Deutsche Erdoel AG, an international exploration and production company for oil and gas.

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 038, 31.01.2019, p. 20.

- (3) **BASF** is mainly active in the chemical sector, with a portfolio split into chemicals, performance products, functional materials and solutions, agricultural solutions and oil and gas. BASF owns Wintershall Holding GmbH, which is active in the exploration and production of oil and gas inter alia in Europe.
- (4) In **Wintershall DEA**, LetterOne and BASF will combine Wintershall's and DEA's businesses in the exploration and production of oil and gas. In addition, Wintershall DEA will also, to a limited extent, be active in gas transportation.

2. THE CONCENTRATION

- (5) The Transaction consists in the formation of a full-function joint venture (the "JV") Wintershall DEA, between BASF in relation to its Wintershall's business, and LetterOne in relation to its DEA Group's business.⁴

2.1. Joint control

- (6) While LetterOne and BASF will hold respectively 33% and 67% in Wintershall DEA, the Transaction consists of the creation of a company jointly controlled by the Notifying Parties. The JV will have three corporate bodies:
 - (a) A *Management Board*, in charge of the day-to-day operations of the JV;
 - (b) A *Shareholder's Meeting*, whose approval is necessary for some of the strategic decisions, namely the annual budget and relating business plans, during the Initial Period (i.e. the period until the earlier of an initial public offering⁵ or the expiry of [...] following Closing), and in which shareholders exercise their voting rights in proportion with their shareholding and take decisions with a simple majority;
 - (c) A *Supervisory Board*, whose approval is necessary for some of the strategic decisions, such as on the annual budget and relating business plans as well as the appointment of the members of the management board, after the Initial Period. The Supervisory Board consists of [...] members – [...] employee representatives, [...] BASF members and [...] LetterOne members - and takes decisions by [...].
- (7) In addition, the JV will have a *shareholders' committee* ("SC"), in which the strategic decisions, such as the determination of the business plan, the approval or amendment of the annual budget and the approval of any investment exceeding [...], are discussed beforehand. The purpose of the SC is to coordinate the interests of the parents, to pre-align their views and resolve any strategic decisions on the agenda of the upcoming Shareholder's Meeting or Supervisory Board meeting.

⁴ For the sake of completeness, we note that in parallel to the Transaction, DEA has divested all its natural gas storage business in Germany, as per a transaction that was approved by the Bundeskartellamt and completed on 1 January 2019.

⁵ By the initial public offering ("IPO"), Wintershall DEA will become a publicly listed company on the Frankfurt or other stock exchange. [...].

- (8) During the Initial Period, decisions in the SC are taken by [...], by lack of which the respective resolution is dropped and the matter will not be discussed at the level of the respective corporate body. Also, the shareholders have the obligation to use their influence to ensure that decisions at the level of the Shareholders' Meeting are taken in accordance with the corresponding decision taken in the SC, which includes the obligation to uniformly exercise their voting rights in the Shareholders' Meeting. As such, the SC can be considered a legally binding pooling agreement within the meaning of paragraph 75 of the Jurisdictional Notice, determining the voting behaviour in the JV's relevant corporate body.
- (9) In view of the above, the Notifying Parties jointly control Wintershall DEA in the Initial Period, which is in view of paragraph 34 of the Jurisdictional Notice sufficiently long to constitute a lasting change of control.

2.2. Full functionality

- (10) Wintershall DEA will be a joint venture performing on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(4) of the Merger Regulation. As it is the entirety of both DEA's and Wintershall's already existing functioning standalone businesses that will be combined in the JV, the JV's activities will consequently necessarily go beyond one specific function for the parent companies, it will have its own presence on the market and will possess sufficient resources to operate independently. Furthermore, it will have its own management team⁶ that is free to determine its own commercial policy, in addition to independent employees. Also, it will possess all necessary regulatory authorisations, permits and licences to conduct its business. Lastly, the JV's existence is not limited in time; the agreement can only be terminated as of the twentieth anniversary of Closing.

3. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million⁷ (LetterOne: EUR 8 999 million BASF: EUR 64 475 million). Each of them has an EU-wide turnover in excess of EUR 250 million (LetterOne: [...] BASF: EUR [...]), 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 pursuant to Article 1(2) of the Merger Regulation.

⁶ Concretely, the JV will have a management board in charge of its day-to-day operations, which shall consist of five managing directors, including one chairman – the chief executive officer – that will be appointed by BASF, and one deputy chairman – the deputy chief executive officer – that will be appointed by LetterOne. The other directors will be appointed by BASF and LetterOne by consensus.

⁷ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

4. MARKET DEFINITION

- (12) The Transaction will give rise to two main horizontal overlaps in relation to (i) the exploration of crude oil and natural gas; and (ii) the development, production and upstream supply of natural gas (see Sections 4.1 and 4.2 below).
- (13) For completeness, the Commission notes that the Transaction also results in horizontal overlaps in relation to (i) the development, production and upstream supply of crude oil, and (ii) the development, production and sale of natural gas liquids (“NGLs”). Neither of these horizontal overlaps however lead to affected markets. Therefore, the Commission will not discuss these markets any further in this decision.
- (14) Furthermore, the Transaction gives rise to the following vertical relationships:
- (a) the Notifying Parties’ activities in relation to the exploration of oil and natural gas (upstream) and their activities in the development, production and sale of (i) oil and (ii) natural gas (downstream);
 - (b) BASF’s activities in various oilfield solutions (upstream) and the Notifying Parties’ activities in each of (i) the exploration of crude oil and natural gas (downstream), (ii) the development, production and sale of crude oil (downstream) and (iii) the development, production and sale of natural gas (downstream);
 - (c) BASF’s activities for various gas treatment products (upstream), and the Notifying Parties’ activities in each of (i) the development, production and sale of natural gas (downstream) and (ii) the development, production and sale of NGLs (downstream);
 - (d) each of the Notifying Parties’ activities in relation to the production and sale of gas treatment products (upstream) and (i) BASF’s activities in the development, production and sale of natural gas (upstream) and (ii) DEA’s activities in the liquefaction of LNG (downstream);
 - (e) the Notifying Parties’ activities in relation to the development, production and sale of natural gas (upstream) and Wintershall’s activities in the transport of natural gas (downstream);
 - (f) the Notifying Parties’ activities in the development, production and sale of natural gas (upstream) and BASF’s activities in the production and sale of natural gas-based products (downstream);
 - (g) the Notifying Parties’ activities in the development, production and sale of natural gas (upstream) and (i) BASF’s activities in the production and sale of natural gas-based products (upstream), and (ii) Wintershall’s activities in the retail supply of natural gas (downstream); and

- (h) the Notifying Parties' activities in the development, production and sale of NGLs (upstream) and BASF's activities in the production and sale of NGL-based products.⁸
- (15) However, none of these vertical links lead to vertically affected markets.⁹ Therefore, the Commission will not discuss these markets any further in this decision.

4.1. Exploration of crude oil and natural gas

4.1.1. Product market definition

The Commission's decision-making practice

- (16) In previous decisions, the Commission has concluded that the exploration of crude oil and natural gas, *i.e.* the finding of new hydrocarbon reserves, constitutes a separate market.¹⁰ Furthermore, the Commission has considered that no distinction is necessary between the exploration of crude oil on the one hand and the exploration of natural gas on the other hand, as the contents of underground reservoirs cannot be known at the exploration stage.¹¹

The Notifying Parties' view

- (17) The Notifying Parties do not contest the Commission's decisional practice with regard to the product market definition.

The Commission's assessment

- (18) The market investigation has not brought to light any indication that would contradict the Commission's decisional practice to define a separate relevant product market for the exploration of oil and natural gas.
- (19) In light of the above, the Commission takes the view that the exploration of oil and natural gas constitutes a separate relevant product market.

⁸ For completeness, as DEA divested its gas storage business on 1 January 2019. As such, no vertical link arises between the Notifying Parties' activities in relation to the development, production and sale on the one hand, and DEA's activities in gas storage on the other, or between DEA's activities in gas storage and the Notifying Parties' activities for the retail supply of natural gas.

⁹ For the sake of completeness the Commission notes that should the market for the development, production and natural gas be defined on the narrowest basis both geographically (national) and regarding the relevant product market, the Transaction leads to technically vertically affected markets between the worldwide market for exploration of oil and natural gas (upstream) and the development, production and sale of L-gas in Germany (downstream). In view of the very limited market shares of the Notifying Parties on the upstream market, as well as the declining downstream market (see section 5.1.2), the Commission takes the view that input or customer foreclosure is unlikely to occur.

¹⁰ M.7318, *Rosneft / Morgan Stanley Global Oil Merchanting unit*, paras. 9-10; M.5629, *Normenston / Mol / JV*, paras. 10-11; M.5585, *Centrica / Venture Production*, paras. 8-9; M.4934, *Kazmunaigaz / Rompetrol*, para. 3; M.3294, *Exxonmobil / BEB*, para. 11 ; M.3086, *Gaz de France / Preussag Energie*, paras. 8-10.

¹¹ M.3294, *Exxonmobil / BEB*, para. 16.

4.1.2. Geographic market definition

The Commission's decision-making practice

- (20) In previous decisions, the Commission has defined the market for exploration of oil and natural gas as worldwide in scope¹² as the companies engaged in exploration do not tend to limit their activities to a particular geographical area.¹³

The Notifying Parties' view

- (21) The Notifying Parties agree with the Commission's decisional practice to define the market for the exploration of oil and natural gas as worldwide in scope.¹⁴
- (22) In this regard, the Notifying Parties submit that the licensing system is highly competitive and open to companies worldwide. They consider that national differences in the regulatory framework do not warrant the definition of national markets. Furthermore, the companies looking to acquire exploration licences will consider projects at least on a European-wide basis.¹⁵ Therefore, the Notifying Parties consider that no Member State (MS) constitutes a national market with regard to the exploration of oil and gas.¹⁶

The Commission's assessment

- (23) The market investigation indicated that the geographic scope of the activities of companies in oil and natural gas exploration differs. Indeed, while there are a number of companies active on a worldwide basis, some smaller competitors only hold licences in some or even one MS.¹⁷
- (24) In particular, two of the competitors responding to the market investigation suggested that Germany constitutes a separate – national – geographic market due to certain regulatory mechanisms and subsurface data ownership and availability.¹⁸
- (25) However, the vast majority of respondents considers that there are no barriers to entry into any specific regions or Member States. Moreover, the majority of the players active in Germany does not consider Germany to be a separate geographic market.¹⁹
- (26) Furthermore, a representative of public authorities in charge of geological data confirmed that although geological data is indeed the property of the exploration companies, given the maturity of the German fields, the data is generally known.

¹² M.7318, *Rosneft / Morgan Stanley Global Oil Merchanting unit*, paras. 9-10; M.5629, *Normenston / Mol / JV*, para. 11; M.5585, *Centrica / Venture Production*, para. 9; M.4934, *Kazmunaigaz / Rompetrol*, para. 11; M.3294, *Exxonmobil / BEB*, para. 17 ; M.3086, *Gaz de France / Preussag Energie*, para. 10.

¹³ M.5629, *Normenston / Mol / JV*, para. 11 ; M.5585, *Centrica / Venture Production*, para. 9.

¹⁴ Paras. 187-188 of the Form CO.

¹⁵ The Notifying Parties note that they [...].

¹⁶ Para. 187 of the Form CO.

¹⁷ Replies to questions 3 and 4 of questionnaire Q1 – Exploration of oil and gas – Competitors.

¹⁸ Replies to question 5 of questionnaire Q1 – Exploration of oil and gas – Competitors.

¹⁹ Replies to question 5 of questionnaire Q1 – Exploration of oil and gas – Competitors.

Moreover, on a private basis, any other company can buy the data from the licence holder.²⁰

- (27) In view of the above and in line with its previous decisions, the Commission considers that the market for exploration of oil and gas is worldwide in scope.

4.2. Development, production and upstream supply of natural gas

4.2.1. Product market definition

The Commission's decision-making practice

- (28) As mentioned above, as for the product market definition the Commission has previously defined a separate market for the development, production and upstream supply of natural gas, distinct from the upstream production of crude oil.
- (29) Furthermore, the Commission has in the past considered that piped gas and liquefied natural gas ("LNG") present distinguishing features and for this reason can be part of distinct markets.²¹ In any event, the exact product market definition can be left open for the purpose of this decision since the Transaction does not lead to serious doubts as to its compatibility with the internal market regardless of whether the upstream supply of LNG constitutes a separate market or forms part of a broader market encompassing also non-liquefied natural gas.²²
- (30) In addition, the Commission has considered in previous cases a distinction between high calorific value gas ("H-gas") and low calorific value gas ("L-gas") at each level of the gas supply chain as well as in respect of gas transmission and gas distribution services.²³ While stating that there are a number of elements pleading in favour of a distinction of L-gas and H-gas also with regard to wholesale supply, the Commission has ultimately left the market definition open save with respect for Belgium and France where the Commission found that H-gas and L-gas do not belong to the same product market.²⁴

The Notifying Parties' view

- (31) The Notifying Parties consider that the relevant product market comprises the development, production and sale of natural gas including both piped gas and LNG.

²⁰ Minutes of the conference call with the Ministry of Economic Affairs of Lower Saxony on 14 February 2019, paras. 6-7.

²¹ Case M.7631 – *Royal Dutch Shell/BG Group*.

²² M.8771, *Total / Engie (part of liquefied natural gas business)*, para. 17; M.6801 *Rosneft / TNK BP*; para. 16; M.6910, *Gazprom / Wintershall / Target Companies*, para. 83 and para. 91. For the sake of completeness, the Commission notes that only LetterOne is active in the wholesale supply of LNG. As such, the Transaction does not result in a horizontal overlap in this regard. The Notifying Parties have also confirmed that if a market for the development, production and sale of LNG were to be considered, this would not give rise to a vertically affected market. For these reasons, this potential sub-segmentation will not be discussed further in this decision.

²³ M.6910 *Gazprom / Wintershall / Target companies*, paras. 73-82; M.4180 *Gaz de France/Suez*, paras. 64-69; M.5467 *RWE/Essent*, paras. 327-329; M.5802 *RWE Energy/Mitgas*, para. 17.

²⁴ M.6910 *Gazprom / Wintershall / Target companies*, paras. 75-83; M.4180 *Gaz de France/Suez*, paras. 64-69; M.5467 *RWE / Essent*, paras. 327-329.

- (32) As regards a possible distinction between L-gas and H-gas, the Notifying Parties claim that there would be no justification for such a distinction given that the production of L-gas (i) is limited to Germany and the Netherlands in the EEA; (ii) has been consistently diminishing and is to be expected non-existent by 2029 as the German L-gas transmission network will have been converted into a H-gas network. Furthermore, even though H-gas and L-gas have slightly different technical characteristics, the Notifying Parties submit that they remain interchangeable as they can be used for the same purposes and can be easily physically converted into one or the other in exchange for a small – EUR 0,45/MWh for conversion of H-gas into L-gas - or no conversion fee – for conversion of L-gas into H-gas.²⁵

The Commission's assessment

- (33) The Commission's market investigation revealed some indications pointing to a need to distinguish between H-gas and L-gas.
- (34) As regards the supply side, in the EEA L-gas is only produced in the Netherlands and parts of Germany. The majority of L-gas sales in Germany are in fact imports from the Netherlands.²⁶ While some producers can supply both L-gas and H-gas, often they only supply one quality or the other. Upstream wholesale suppliers usually offer both qualities of gas.²⁷
- (35) As regards the demand side, respondents to the market investigation pointed out that the L-gas and H-gas transmission grids in Germany, where the Notifying Parties are active, are physically separated, with the interconnection points, transport capacities from and to gas storage facilities across the value chain being assigned to one quality.²⁸ In addition, contracts with upstream wholesale gas suppliers specify the type of L-gas to be delivered. Indeed, the delivered gas must comply with the quality specification of the delivery point, and it is in Germany not possible to transfer gas without identifying the delivery point and thus the quality. As such, in case one would want to switch, a new contract needs to be concluded.²⁹
- (36) However, it is possible to physically convert H-gas into L-gas and vice versa. In fact, this is the responsibility of the "Market Area Managers", NetConnect Germany ("NCG") and Gaspool, who are obliged to enable the trade across gas qualities within their respective Market Area, meaning that they have to provide the L-gas quantities necessary to enable all market participants to fulfil their supply obligations, even to those market participants bring H-gas into the area while delivering L-gas. That being said, market respondents indicated that in

²⁵ See the Notifying Parties' reply to question 1 of RFI03 of 8 February 2019.

²⁶ See FNB Gas Netzenwicklungsplan Gas 2018-2028, tables 18, 22, 24 and 27, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf and replies to question 2 of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers

²⁷ Reply to RFI 3 of 11 February 2019, para. 9; Replies to question 2 of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers.

²⁸ Replies to questions of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers; FNB Gas Netzenwicklungsplan Gas 2018-2028, Chapter 5, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf.

²⁹ Replies to question 10 of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers.

Germany no large-scale conversion plants are built, so that based on the existing conversion facilities, only a part of the demand can be fulfilled by technically converted H-gas. A respondent also mentioned that due to the ongoing reduction of physical L-gas supply, the possibility of switching big volumes from H-gas to L-gas also appears limited. When using the technical conversion facilities is not sufficient to counterbalance market shifts, Market Area Managers have to revert to commercial balancing measures.³⁰

- (37) In addition, conversion comes at a cost. Concretely, if a market participant wants to convert the gas quality supplied from H-gas to L-gas, a conversion fee is due which is currently capped at 0.45 €/MWh. Furthermore, since the revenues from the conversion fee do not fully cover the costs for providing physical L-gas, the Market Area Managers are entitled to charge a “conversion neutrality charge”. While the “conversion fee” is charged only to those market participants that actually convert H-gas, the conversion neutrality charge is to be paid by all market participants in the respective Market Area.³¹
- (38) The Commission notes that the above considerations argue in favour of distinguishing between L-gas and H-gas for the development, production and sale of natural gas.
- (39) In any event, for the purpose of this decision, the exact scope of the product market definition can be left open, as the Transaction does not give rise to serious doubts irrespective of the exact market definition upheld.

4.2.2. Geographic market definition

The Commission’s decision-making practice

- (40) In previous decisions, the Commission has considered that from a demand-side perspective the market could potentially be EEA-wide in scope, though from a supply-side perspective, due to limited interconnection infrastructure or lack of available cross-border capacity, the relevant geographic market might be narrower and potentially regional as encompassing several Member States or even national in scope.³²

The Notifying Parties’ view

- (41) The Notifying Party considers that the relevant geographic comprises at least the EEA, if it is not worldwide, since producers compete with importers, market rules are similar and there are sufficient transportation capacities.

³⁰ Replies to questions 4, 5 and 8 of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers. See also NCG General information about the conversion mechanism, <https://www.net-connect-germany.de/en-gb/Information/Balancing-Group-Managers/Gas-Quality-Conversion/Information-Conversion-Mechanism>.

³¹ Replies to questions 4 and 7 of follow-up questionnaire to questionnaire Q3 – Development, production and sale of natural gas – Customers.

³² M.6910 *Gazprom / Wintershall / Target Companies*, para. 86; M.6801 *Rosneft/TNK-BP*, para. 12; M.4545 *Statoil/Hydro*, paras. 13-16.

The Commission's assessment

- (42) The market investigation indicated that while the majority sources on an EEA-wide basis, some companies are also only active in some or one Member State. In particular in relation to L-gas, some market investigation respondents hinted to the existence of a market comprising only L-gas produced in Germany.³³
- (43) In any event, for the purpose of this decision the exact scope of the geographic market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market even under the narrowest plausible market definition, being national.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal non-coordinated effects

5.1.1. Exploration of crude oil and natural gas

The Notifying Parties' view

- (44) The Notifying Parties submit that the Transaction will not lead to competition concerns in view of their limited combined market shares, as well as the presence of strong competitors.³⁴

The Commission's assessment

- (45) In the course of the market investigation, some concerns were raised in relation to the exploration of crude oil and natural gas. The Commission however considers that the Transaction does not raise serious doubts with regard to market for oil and natural gas exploration based on the following reasons.
- (46) First, the Notifying Parties' market shares are very limited on a worldwide basis. Indeed, LetterOne and BASF respectively achieved a market share of less than [0-5]% and [0-5]% in 2017.^{35 36}
- (47) Second, even after the combination of the exploration businesses of the Notifying Parties, a competitive constraint [...] to be exerted on Wintershall DEA by various competitors including large players such as Saudi Aramco, Total, Shell, Exxon Mobil or Gazprom, as well as more regional players.
- (48) Third, the market investigation did not indicate that the Notifying Parties would be particularly close competitors of each other. Indeed, the vast majority of

³³ Replies to questions 1 and 3 of questionnaire Q3 – Development, production and sale of natural gas – Customers.

³⁴ Paras. 346-347 of the Form CO.

³⁵ Table 7 of the Form CO.

³⁶ For the sake of completeness, the Commission notes that even on a narrower Germany-only basis, a market definition which is not confirmed by the market investigation, the Notifying Parties achieve a combined market share of [10-20]%, not amounting to an affected market (reply to question 2 of RFI1 of 4 February 2019).

* Should read: "will continue"

respondents to the Commission's market investigation did not consider them among each other's three closest competitors.³⁷

- (49) Fourth, the vast majority of respondents indicated that it would not be more difficult to efficiently compete in the market for the exploration of oil and natural gas post-transaction;³⁸ and that the Transaction would not have an impact on the access to upstream services or input material.³⁹
- (50) Finally, the vast majority of respondents indicated that the Transaction would not have an effect on prices or the competitiveness of the oil and gas exploration market.
- (51) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the market for exploration of oil and natural gas.

5.1.2. Development, production and upstream supply of natural gas

The Notifying Parties' view

- (52) The Notifying Parties submit that the Transaction will not result in competition concerns in view of the limited market share increment and the fact that the joint venture will face strong competition from several competitors, notably from BEB Erdgas und Erdöl GmbH & Co. KG (a joint venture in which each of Exxon Mobil and Shell have a 50% share, "BEB") but also from others such as for example Engie E&P.
- (53) Furthermore, there is a significant competitive constraint from importers such as Gazprom, as only 5% to 10% of the German demand is covered by local production with the rest being covered by imports.
- (54) In addition, wholesalers purchasing natural gas are typically sophisticated customers who diversify their procurement and often apply multi-sourcing strategies.

The Commission assessment

- (55) The Commission considers that the Transaction does not raise serious doubts with regard to market for the development, production and upstream supply of natural gas based on the reasons explained in the following paragraphs.
- (56) On an overall market for the development, production and upstream supply of natural gas – encompassing both L-gas and H-gas – Wintershall DEA's market shares would be low. On an EEA-wide basis DEA's market share remains below [0-5]% and Wintershall holds a market share of [0-5]%. On a national level, the Transaction gives within the EEA rise to an overlap in each of Norway and Germany, where the Notifying Parties' combined market share would be respectively [0-5]% and [20-30]%.

³⁷ Replies to question 7 of questionnaire Q1 – Exploration of oil and gas – Competitors.

³⁸ Replies to question 9 of questionnaire Q1 – Exploration of oil and gas – Competitors.

³⁹ Replies to question 10 of questionnaire Q1 – Exploration of oil and gas – Competitors

- (57) Moreover, at both EEA level and in Norway and Germany, multiple competitors exist such as ExxonMobil, Gazprom, PetroChina, BP, Equinor and Total, and as explained in paragraph 53 above, in Germany imports play a critical role.
- (58) As regards the narrowest plausible market, that is considering a separate product market for each of L-gas and H-gas, the Commission notes that the Notifying Parties' activities only overlap as regards L-gas in Germany. L-gas sold in Germany is either produced domestically or imported from the Netherlands. In fact, Germany relies heavily on Dutch imports for its L-gas (and that there are no exports of L-gas out of Germany).⁴⁰
- (59) On a market encompassing only local German L-gas production, the Notifying Parties' estimate their combined market share to be [30-40]%, with an increment of [10-20]% brought about by BASF. This market share is, however, likely to overestimate Wintershall DEA's competitive position in the market for the development, production and sale of L-gas in Germany. Concretely, it appears that currently 61.6% of German demand is met by imports from the Netherlands, while only 9.3% is satisfied by domestic production; the remaining demand being covered from storage capacity and – to a limited extent – physical conversion of H-gas to L-gas.⁴¹ The proportion of demand to be met by local production is expected to remain and even decrease in the coming years.⁴² If imports from the Netherlands are taken into account, Wintershall DEA's combined market share in a market for the development, production and sale of L-gas in Germany would be only [5-10]%⁴³.
- (60) Some third parties raised concerns in the course of the market investigation that the Transaction would lead to a highly concentrated market. However, whilst the Transaction has a concentrative effect (as all mergers do), Wintershall DEA would continue to face significant competitive constraints from various strong competitors such as BEB, Mobil Erdgas-Erdöl GmbH⁴⁴ and Vermilion who together represent a volume that is higher than Wintershall DEA, in addition to importers.⁴⁵ As such, customers' ability to multi-source is unlikely to be jeopardised.
- (61) Furthermore, L-gas production in Germany is steadily decreasing, accompanied by a steady decline of imports into Germany from the Netherlands.⁴⁶ In reaction, a Germany-wide initiative - the "Gas Network Development Plan" - was launched. This Gas Network Development Plan sets out the timeline for the

⁴⁰ Reply to questions 1 and 2 of RFI 4 of 13 February 2019.

⁴¹ See FNB Gas Netzenwicklungsplan Gas 2018-2028, table 24, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf.

⁴² Concretely, according to the conversion plan of the German transmission system operator, domestic production will be used for 8.5% of German demand in 2018/19, 8.3% in 2019/20 and 8.6% in 2020/21. See FNB Gas Netzenwicklungsplan Gas 2018-2028, table 24, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf.

⁴³ As Wintershall's volumes include also H-gas produced offshore, accounting for roughly about [...] % of Wintershall's total natural gas production in Germany, this combined market share might be slightly inflated.

⁴⁴ Mobil Erdgas-Erdöl GmbH is a subsidiary of Exxon Mobil.

⁴⁵ Reply to question 3 of RFI 4 of 13 February 2019.

⁴⁶ FNB Gas Netzenwicklungsplan Gas 2018-2028, Chapter 5, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf.

conversion of the German gas transmission network from L-gas to H-gas until 2030 when L-gas is expected to disappear completely from Germany.⁴⁷ The Gas Network Development Plan provides no indications of a change in the supply-side market structure. Even more, it estimates that already as of 2020, the German L-gas demand will be lower than the overall L-gas supply in Germany.⁴⁸

- (62) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the development, production and sale of natural gas whether H-gas and L-gas are considered as belonging to the same or separate markets.

6. CONCLUSION

- (63) 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*

⁴⁷ As by 1 October 2029, natural gas will no longer be imported from the Netherlands into Germany and by 2030 L-gas will virtually disappear from the Germany. Reply to question 1 of RFI 3 of 11 February 2018; Monitoring Report 2017 Bundesnetzagentur / Bundeskartellamt, page 322, <https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/Areas/ElectricityGas/CollectionCompanySpecificData/Monitoring/MonitoringReport2017.pdf?blob=publicationFile&v=2>.

⁴⁸ FNB Gas Netzenwicklungsplan Gas 2018-2028, Figure 18 and 20, https://www.fnb-gas.de/files/2018_03_29_entwurf_nep-gas-2018-2028_1.pdf.