EUROPEAN COMMISSION
DG Competition

Case M.10372 - SHV ENERGY / UGI INTERNATIONAL HOLDING / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2021

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SHV Energy N.V.
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Subject: **Case M. 10372 — SHV ENERGY / UGI INTERNATIONAL HOLDING / JV**
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]

Dear Sir or Madam,

(1) On 17 November 2021, the Commission received notification of a proposed concentration pursuant to Article 3(1)(b) and 3(4) of Council Regulation (EC) No

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').

139/2004 by which SHV Energy N.V. ("SHVE", the Netherlands) and UGI International Holdings B.V. ("UGI International", the Netherlands), acquire joint control over a newly created joint venture (the "JV") (the "Proposed Transaction"). SHVE and UGI International are designated hereinafter as the "Notifying Parties" or the "Parents" and, together with the JV, as the "Parties". The Proposed Transaction will be accomplished by way of purchase of shares.

1. The Parties

(2) SHVE is a wholly owned subsidiary of SHV Holdings N.V. ("SHV", the Netherlands), active in the area of sustainable fuels and renewable energy solutions, as well as in the distribution of off-grid energy, such as liquefied petroleum gas ("LPG") and liquefied natural gas ("LNG"), for business and residential customers.

(3) UGI International is an indirect, wholly owned subsidiary of UGI Corporation ("UGI", United States), active in the distribution and marketing of energy products, including LPG, and related services.

(4) The JV will be active in the development and commercialization of renewable Dimethyl Ether ("rDME") in a sustainable and cost-efficient manner, as well as in advocating the industry and market acceptance of, and interest in, rDME for de-fossilization.

2. The concentration

(5) On 20.04.2021, the Parties agreed on the Heads of Terms, comprising the principal terms of the contemplated JV that will be included in a shareholders' agreement (the "HoT").[3] Completion of the Proposed Transaction is subject to a number of conditions (including merger control clearance), as further set out in the HoT, and will take place shortly after the conditions have been satisfied.

(6) The newly created JV will be a 50/50 partnership, with SHVE and UGI International each assuming joint control. Unanimous JV Parents' consent (or by its appointed directors)[4] will be required for reserved matters at the shareholders and/or board meetings, including for strategic decisions such as approval of the initial five year business plan and budget (and any amendment or update thereof), as well as the appointment and dismissal of the senior management team. Accordingly, SHVE and UGI International will equally enjoy veto rights on strategic decisions giving rise to joint control.

(7) The JV will have sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests. The JV will have management dedicated to its day-to-day operations. The executive

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3 In addition the JV Parents have made public announcement with regard to the creation of the JV on May 17 and 18, 2021 (see https://www.ugicorp.com/news-releases/news-release-details/shv-energy-and-ugi-launch-joint-venture-accelerate-transition and https://www.shv.nl/news/shv-energy-and-ugi-launch-joint-venture-accelerate-transition-lpg-industry-sustainable-future).

4 The JV will be set up with a board comprising of three directors. [description of the procedure regarding the appointment of directors].

director will act as CEO and two non-executive directors will supervise and advise the executive director. The JV's CEO and independent executive director, which will be exclusively devoted to the JV's business, will be employed by the JV, and the JV will have a sufficient number of staff dedicated to its operation on a full-time basis.

(8) The JV's initial budget will cover [details regarding the JVs budget]. Once the JV becomes operational and starts to generate revenues, [details regarding the finances of the JV].

(9) The JV will have sufficient freedom to make business and investment decisions. Its management will have discretion to [details regarding discretion of the management]. [details regarding rDME activities to be transferred to the JV].[5] As a result, the JV will operate fully independently from its parents on rDME projects. The JV is geared to play an active role on the market and intends to sell at least [20-30]% of its projected sales to third parties and have a commercial, non-preferential, relationship with its parents (i.e. by treating them on an arm's length basis in the same way as third parties).[6] The JV will perform its activities on a lasting basis as the JV Parents intend to set up the JV for a duration of at least 10 years. Therefore, the JV is full-function.

3. UNION DIMENSION

(10) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (SHV: EUR 19,483 million; UGI: EUR 5,742 million)[7]. Each of them has a Union-wide turnover in excess of EUR 250 million (SHV: EUR […]; UGI: EUR […]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Proposed Transaction therefore has a Union dimension.

4. MARKET DEFINITION

4.1. Introduction to the products concerned by the Proposed Transaction

(11) The Notifying Parties are active in refined fuel products, while the JV will be active in the development and commercialization of rDME. rDME is a low-carbon sustainable liquid gas that can be produced from multiple renewable feedstock. rDME has clean combustion characteristics and offers a logistical advantage as it can be transported in liquid form using largely established off-grid infrastructure for traditional fuels such as LPG. There are essentially two options to use rDME as a fuel: first, as a 20% blend of rDME in LPG: this can be used with no modification to existing LPG equipment; or, second, as 100% (pure) rDME, which requires modifications to existing LPG equipment and is anticipated to be a preferred solution for large industrial customers in the future.

5 [details regarding rDME activities to be transferred to the JV].

6 Parties' response to RFI 1, question 1, and principal terms of the contemplated joint venture (Heads of Terms, clause 12).

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

(12) Being a relatively new technology, potential markets for the production and supply of rDME have not been examined by the Commission so far.

(13) In the next sections the market structure of refined fuel products, where the Notifying Parties are active, is outlined. Subsequently, a number of potential market definitions that could apply to the production and supply of rDME, where the JV will be active, are considered.

4.2. Product market definition

4.2.1. Refined fuel products

(14) According to previous decisions, the market for refined fuel products can be divided into upstream (exploration and production of crude oil and natural gas) and downstream activities.[8]

(15) Upstream activities include the exploration and production of crude oil and natural gas. Downstream activities encompass the marketing and distribution of refined fuel products. In previous cases, the Commission consistently distinguished three different levels of distribution, two of which occur at the wholesale level (i.e. (i) ex-refinery sales and (ii) non-retail sales)[9] and a third which relates to retail sales (i.e. sales exclusively to end customers).

(16) At the wholesale level, the primary level of distribution, ex-refinery sales, typically includes the supply to wholesalers, traders or the internal wholesale arm of the refiners. The second level of distribution, non-retail sales, encompasses the supply to independent resellers or retailers not integrated upstream and to large industrial and commercial consumers by secondary means of transport (e.g., trucks). At the wholesale and non-retail sales level, separate markets have been defined by fuel type due to their different characteristics, use and purchasers. Accordingly, at least the following markets within the first and second levels of wholesale distribution can be distinguished: supply of (i) diesel, (ii) gasoline, (iii) LPG, (iv) heavy fuel oil and (v) light fuel oil.[10] The 'traditional' fuel segments also include their biofuel variant (e.g., the market segment for diesel also includes biodiesel, and the market for LPG also includes bio LPG).[11]

(17) The retail level comprises sales of fuels to end customers. The motor fuel retail segment comprises sales through all service stations, branded and unbranded, and is not further divided by fuel type (such as diesel, gasoline or LPG). Although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), the Commission has considered different fuel types to form one market at the retail level as they are

8 Case M.6286, Südzucker / ED&F Man, decision of 16 May 2012, para. 719.

9 Case M.7311, MOL/Eni Ceska/Eni Romania/Eni Slovensko; Cases M.6801, Rosneft / TNK-BP, M.6463, Marquard & Bahls, M.4348, PKN / Mazeikiu, paragraph 7.

10 Cases M.9626, PKN Orlen/Energa, paragraph 36 *et seq*.; M.8601 – Greenergy / Inver, paragraph 8.

11 Bio LPG is chemically exactly the same as fossil LPG, and can be used as such in all existing LPG equipment and appliances. Cases M.4798 – BP / Associated British Foods / JV, paragraph 24; M.6286 – Südzucker / ED&F Man, paragraph 720. Also applicable at the retail level, see Case M.6286, Südzucker / ED&F Man, paragraph 720 *et seq*.

always available at the same point of sales and therefore substitutable from a supply-side perspective.[12]

(18) The Notifying Parties do not dispute the Commission's previous findings with respect to these markets.[13]

4.2.2. RDME

(19) As explained, rDME is a novel technology and the Commission's precedents have not considered the inclusion of such product in the above-mentioned product markets.

(20) The Notifying Parties submit that rDME is not part of the refined fuel products market(s), and that it should be considered as a separate product market (and that, therefore, the Proposed Transaction does not give rise to any horizontal overlaps). In particular, the Notifying Parties argue that there will be limited demand-side substitutability between traditional refined oil products such as LPG and rDME, essentially due to the required equipment conversion costs (necessary to switch from LPG use to rDME use) and the premium price of sustainable fuels such as rDME as opposed to cheaper traditional products including fossil LPG.[14]

(21) The results of the market investigation generally confirmed that rDME might constitute a separate product market from those of traditional fuels. In particular, the majority of competitors responding to the market investigation agreed that rDME prices would, when it starts to be commercialised, be substantially higher than the prices for traditional refined oil products, that LPG equipment would need adaptation to be used with pure rDME (it is estimated that blended LPG with a maximum of 20% rDME would not entail the need to modify existing LPG equipment),[15] and that current LPG producers would not easily switch their production to rDME, given the "*different production technology and equipment required*".[16]

(22) Moreover, only a small minority of the respondents to the Commission's market investigation (two competitors) indicated that the market for LPG and other refined oil products should encompass rDME, whilst the vast majority stated that rDME should form a separate market (e.g. "*[...] the cost of modifications to switch from LPG or blended LPG to pure rDME mean that LPG or blended LPG and pure rDME are not directly substitutable. This suggests that pure rDME would form a distinct segment of the market*"); or they could not ascertain the exact product segmentation at this stage given the prospective nature of rDME production in the

12 Cases M.5637 Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings; M.5005 Galp Energia / Exxonmobil Iberia; M.1383 Exxon/Mobil.

13 Form CO, section 6.1.

14 Form CO, section 6.2.

15 Respondents to the market investigation confirmed this ("*en mélange a priori ces produits ne nécessitent pas d'adaptation particulière*" or "*early findings indicate that a blending of rDME/propane must occur in order for rDME to work with the equipment that is compatible with propane*", Responses to eQuestionnaire for competitors, qs. 8 and 10).

16 Responses to eQuestionnaire for competitors, q. 11. Also certain customers of the Parties pointed to this, whilst most were not able to respond given the prospective nature of rDME (e.g.: "*Yes, we expect that rDME prices will, at least initially, be substantially higher than the prices for the traditional refined oil products*"), see Responses to eQuestionnaire for customers, q. 5.

EEA (e.g. "*we do not possess enough data at this time to determine LPG and pure rDME are capable of being freely substituted for each other*").[17]

(23) In any event, the Commission considers that, for the purposes of this decision, the precise product market definition can be left open, as no competition concerns would arise under any plausible product market definition, irrespective of whether the market is defined as encompassing LPG, bio LPG, blended LPG with rDME,[18] and rDME, or whether a separate market were to exist for rDME.

4.3. Geographic market definition

(24) With respect to geographic market definition, the Commission has assessed in previous decisions the potential geographic scope in the various product markets for refined fuel products.

(25) Regarding upstream activities (exploration and production of crude oil and natural gas), while ultimately leaving the question open, the Commission has considered the market to be at least EEA-wide in scope.[19]

(26) As regards the geographic scope of the various markets comprised under the downstream activities, the Commission has considered that those markets usually have a national dimension.[20] Whilst the Notifying Parties do not dispute the Commission's previous findings on the geographic scope of such markets, the market investigation was inconclusive on this point. The majority of competitors that responded indicated that most companies active in the production of refined oil products, and particularly LPG, are typically present at an EEA-wide level.[21] They further considered that if a potential market for rDME alone were to be delineated, this would also be wider than national in scope,[22] whereas most customers considered that it would likely be national.[23]

(27) In any event, the Commission considers that, for the purposes of this decision, the precise geographic market definition can be left open, as no competition concerns would arise under any plausible geographic market definition (even at a national level).

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17 Responses to eQuestionnaire for competitors, q. 8. Most customers replied that they could not ascertain whether these should be separate markets, two stated that rDME should not be part of the market for LPG and other refined oil products, and none replied that they should belong to the same market. Moreover, the majority of customers replied that LPG and rDME are not substitute products or they can only be considered substitutable to a limited extent (e.g.: "*Ces produits ne se substituent pas car l'utilisation du rDME nécessite obligatoirement avant son utilisation une modification de l'équipement*"). See Responses to eQuestionnaire for customers, qs. 6 and 8.

18 Blended LPG (up to a 20% blend, see paragraph 21 above), is substitutable with fossil and bio LPG given that it can be used in all existing LPG equipment and appliances without any adaptation costs, as confirmed by respondents to the Commission's market investigation, see footnote 15 above.

19 Case M.4545, Statoil / Hydro, paragraph 9 *et seq*.

20 Case M.8601, Greenergy / Inver, paragraph 12.

21 Responses to eQuestionnaire for competitors, qs. 14 and 17, and Responses to eQuestionnaire for customers, qs. 14 and 17.

22 Responses to eQuestionnaire for competitors, q. 18.

23 Responses to eQuestionnaire for customers, q. 18.

5. COMPETITIVE ASSESSMENT

(28) The Proposed Transaction gives rise to a potential prospective vertical link between the upstream market for the production and commercialisation of rDME, in which the JV will be active, and the downstream markets for the provision of fuel products, in particular LPG, where the Notifying Parties are active. Depending on the exact scope of the product market (i.e. if the traditional fuel markets were to also include rDME), a potential horizontal relationship may also arise.

5.1. Vertically affected markets

(29) As the Notifying Parties plan to use rDME to blend with LPG (see paragraph (11) above), this creates a potential vertical relationship in the future between the activities of the JV as a wholesale rDME supplier upstream and the Parties' downstream activities as blenders of LPG.

(30) In the absence of past or current production and supplies of rDME or blended LPG in the EEA, the Notifying Parties provided data projections for the 2022-2026 period in, respectively, the markets for the supply of LPG, rDME and blended LPG. Based on these projections as well as the current plans of the Parties to potentially supply blended LPG in a number of EEA Member States, the following vertically affected markets were identified:

(a) The ex-refinery sales of rDME (upstream) and non-retail sales of LPG[24] (downstream) in Denmark,[25] France[26] and Ireland;[27] and,

(b) The ex-refinery sales of rDME (upstream) and retail sales of LPG[28] (downstream) in Austria,[29] France[30] and Ireland.[31]

5.1.1. No input foreclosure

(31) The Notifying Parties submit that no input foreclosure concerns would arise as a result of the Proposed Transaction, as the JV will not be able to foreclose LPG competitors from purchasing rDME for blending or resale purposes, and neither will have the incentive to do so. In fact, the Notifying Parties claim that the JV will have a strong incentive to promote the uptake of rDME by the overall market, and it aims

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24 Including both fossil LPG, blended LPG with rDME, and bio LPG (the latter constituting a [description of the bio LPG volumes sold by the Parties] of the Parties' LPG sales).

25 Combined market shares downstream: [80-90]% from 2022 to 2026. rDME market share (upstream): Below 30% from 2022 to 2026.

26 Combined market shares downstream: Below 30% from 2022 to 2026. rDME market share (upstream): Below 30% except [40-50]% in 2024.

27 Combined market shares downstream: [50-60]% from 2022 to 2026 (UGI not present). rDME market share (upstream): Below 30% from 2022 to 2026.

28 See footnote 24.

29 Combined market shares downstream: [60-70]% from 2022 to 2024, [60-70]% in 2025 and 2026; rDME market share (upstream): Below 30% from 2022 to 2026.

30 Combined market shares downstream: [30-40]% from 2022 to 2026. rDME market share (upstream): Below 30% from 2022 to 2026.

31 Combined market shares downstream: [30-40]% from 2022 to 2026. rDME market share (upstream): Below 30% from 2022 to 2026.

at achieving a collective transition to rDME as alternative and renewable energy source. Any foreclosure strategy would negatively affect this collective transition.[32]

(32) The Commission has found that no input foreclosure concerns are likely to arise in the vertically affected markets for the upstream ex-refinery sales of rDME, and downstream sales of LPG (i) at non-retail level (Denmark, France and Ireland), and (ii) at retail level (Austria, France and Ireland) since the Notifying Parties and the JV will have no ability nor incentive to do so, once (and if) rDME becomes available in the EEA.

(33) *First*, rDME input volumes will be negligible in the next years, due to rDME currently being in the development stage in the EEA. Although some LPG competitors (and prospective rDME competitors) signalled that initially the availability of renewable products in the LPG industry may be indeed limited, and that it would therefore be important for the industry to be able to procure rDME in order to develop and commercialise renewable products, there are a number of companies, besides the JV, that are already developing or exploring future rDME production and supply.[33]

(34) *Second*, even if blended LPG were to become an essential product in the future, both LPG as well as rDME are likely to be available from a number of different suppliers, as more competitors are expected to enter the market if rDME takes hold in the market.[34]

(35) The market investigation confirmed that there is innovation developing and expected to develop around renewable energies, including rDME. For instance, one competitor explained that in fact rDME is already being produced in the U.S. ("*it is important to note the rDME is already being produced. […] Oberon Fuels started producing rDME in the US on May 27, 2021*"[35]).

5.1.2. No customer foreclosure

(36) In terms of potential customer foreclosure, the Notifying Parties submit that they will not have the ability or incentive to foreclose upstream rDME rivals of the JV by restricting their access to a sufficient customer base. While the Notifying Parties represent two potential customers for future rDME off-take, there would be a number of other potential customers for the JV's competitors to supply their rDME

32 Form CO, paragraphs 139-146.

33 Response to eQuestionnaire for competitors, qs. 21 and 24, e.g. "*We are already producing rDME* [in the U.S.] *and will continue to expand production over the next 3-5 years*", and "*we have invested in the production and commercialization of rDME, but we are not yet ready and able to commercialize the product*".

34 In terms of market shares, the Notifying Parties have provided forecasts for rDME sales until 2026, according to which: (i) The JV's market share for ex-refinery sales of rDME at EEA level will be below 30%, and (ii) the Parties' combined market shares for non-retail and retail sales of rDME will be below 30% in all EU countries in which they will be active. Only in the market for non-retail sales of rDME in France in 2024 the Notifying Parties have estimated a combined market share above 30% ([40-50]%), and in 2025 and 2026 the Notifying Parties expect that the share will fall below 30% as new players will enter this market.

35 Response to eQuestionnaire for competitors, q. 26.

to in the EEA since, essentially, all players that are currently active in the supply of LPG in the EEA are potential customers.[36]

(37) The Commission has found that no customer foreclosure concerns are likely to arise in the vertically affected markets for the upstream ex-refinery sales of rDME, and downstream sales of LPG (i) at non-retail level (Denmark, France and Ireland), and (ii) at retail level (Austria, France and Ireland), since the Notifying Parties and the JV will have no ability to do so, once (and if) rDME becomes available in the EEA.

(38) The results of the market investigation confirmed this, with several companies explaining that, were the rDME market to take off in the coming years, they would likely be interested in sourcing rDME in the future, e.g.: "*Ja, mindestens 30% Anteil ab Beginn, bis hin zur komplett Umstellung auf Basis des Preisniveaus*", "*our proposal would be to purchase a blended version 20% initally. Start date would be dependant on performance data*", or "*dans le cas où nos fournisseurs adaptent leur outil de production et n'utilisent que du GPL mélangé alors nous achéterions du GPL mélangé qui contiendra un pourcentage de rDME*".[37] Such potential customers constitute a sufficiently large customer base in both downstream markets (non-retail and retail supply of LPG).[38]

5.2. Horizontally affected markets

(39) The Proposed Transaction would not give rise to any horizontally affected markets if rDME was considered as a separate market from LPG.

(40) Moreover, the JV will only sell rDME at the wholesale level ("ex-refinery" sales), and the Parties do not intend to be active at this level of distribution with rDME more than to an insignificant extent.[39] The JV foresees an off-take agreement [details regarding the Parties' commercialization of rDME and plans how to use and market rDME]. [Description of the situation in which a horizontal overlap could occur], hence giving rise to a (limited) horizontal relationship, in terms of rDME, with the JV. However, this will remain [description of the minor horizontal overlap].[40]

(41) Since rDME is a novel product that was not previously considered, the Commission has assessed potential horizontal overlaps between the Parties and the JV based on a hypothetically wider product market, which would include both LPG and rDME. In such case, the national markets mentioned in paragraph (30) above, namely Denmark, France and Ireland at non-retail level, and Austria, France and Ireland at retail level, would be affected in the future.

(42) Even in such a hypothetical overall market encompassing the supply of LPG and rDME in the future, the Notifying Parties claim that no competition concerns would arise as a result of the Proposed Transaction. This is because the incremental share contributed by the rDME activities of the JV in the affected markets would be

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36 Form CO, paragraphs 147-150.

37 Response to eQuestionnaire for customers, q. 9.

38 E.g. Dopgas, Propangas, Butagaz, Rubis, Flogas, and Viking Energie, with substantial market shares in all affected downstream markets, which in some countries reach more than [50-60]%.

39 The JV does not intend to sell rDME at non-retail or retail level, nor will it be active as supplier of LPG or blended LPG, Form CO paragraph 133.

40 Form CO, paragraph 133.

minimal, large LPG competitors will remain on the market, and significant innovation is taking place around renewable/alternative energy sources to LPG, which will pose a significant constraint on LPG players in the future.[41]

(43) The Commission found that in such hypothetical horizontally affected markets (including both LPG, bio LPG, blended LPG with rDME, and rDME), competition concerns are unlikely to arise.

(44) *First*, given the negligible incremental share contributed by the rDME future activities of the JV in the affected markets (below [0-5]% in all cases, and below [0-5]% in most cases), the Proposed Transaction is unlikely to allow the Parties to leverage such addition in order to increase their LPG or rDME prices and affect their incentives vis-a-vis their supply of LPG.

(45) *Second*, the Parties will continue to face strong competition from other LPG players and new rDME producers in the future, despite the addition of the rDME production of the JV into a hypothetical wider LPG market. If the Parties were to increase LPG prices, customers would easily switch their suppliers. In this sense, the majority of customers responding to the market investigation confirmed that switching their LPG suppliers does not entail important costs and can be (or is) done frequently.[42] The results of the market investigation also did not indicate any horizontal concerns that could arise in a hypothetical market for both LPG and rDME.

6. CONCLUSION

(46) 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
Executive Vice-President

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41 Form CO, paragraph 134 *et seq*.

42 Response to eQuestionnaire for customers, q. 20.