EUROPEAN COMMISSION
DG Competition

Case M.10526 - CHEVRON / NESTE BASE OIL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Chevron Global Energy Inc.
251 Little Falls Drive
Wilmington, DE 19808
United States

Subject: **Case M.10526 – CHEVRON / NESTE BASE OIL**
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 18 January 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Chevron Global Energy Inc., controlled by Chevron Corporation ("Chevron", US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Neste Oyj's base oil business ("the Target", Finland) by way of purchase of shares[3] (the "Proposed Transaction"). Chevron is designated as the "Notifying Party" and together with the Target as the "Parties".

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 38I, 25.1.2022, p. 5.

1. THE PARTIES

(2) Chevron Global Energy Inc. is mainly active in the petroleum refining and lubricants sectors. Its ultimate parent, Chevron, is an integrated energy company based in California (United States). Chevron produces crude oil and natural gas and manufactures transportation fuels, lubricants, petrochemicals and additives. Chevron currently produces and markets Group II base oil. Chevron also produces Group III base oil for the Target under a tolling agreement, i.e. Chevron does not currently market any Group III base oil.

(3) Neste Oyj is an oil refining and marketing company based in Finland. The Target is carved out from Neste Oyj's Oil Products business segment. It consists mainly of the NEXBASE™ brand, associated qualifications and approvals, and sales and logistics contracts, as well as an offtake-agreement for Group II and Group III base oils. The Target primarily produces and markets Group III base oil, as well as limited quantities of Group II base oil.

2. THE CONCENTRATION

(4) The concentration consists of the acquisition of sole control by Chevron Global Energy Inc. over the Target through the acquisition of shares. The Proposed Transaction will be implemented according to the terms of the Master Sale and Purchase Agreement signed on 30 September 2021. Pursuant to the Master Sale and Purchase Agreement, Chevron will acquire all of the shares in Neste Base Oils Finland Oy (which among other things holds the NEXBASE™ brand, and associated qualifications and approvals) and Neste NV from Neste Oyj, as well as inventory, and certain sales, transport and terminal contracts from Neste (Suisse) S.A. and Neste US, Inc. As part of the Proposed Transaction, an offtake agreement will be entered into for the production and delivery of Group II and Group III base oils between Neste Oyj (from the Porvoo refinery in Finland) and Chevron, to come into effect post-closing of the Proposed Transaction.

(5) In light of the above, the Proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Chevron: EUR 82 577 million, Target: EUR […] million) and a combined aggregate turnover in excess of EUR 100 million in […]. Each of the undertakings concerned have a turnover in excess of EUR 25 million in these three Member States. The notified operation therefore has an EU dimension.

4. MARKET DEFINITION

(7) Base oils are produced out of the atmospheric residue of crude oil left after the separation of other major oil products. To produce lubricants, lubricant blenders combine base oil with additives.

(8) The Parties' activities overlap with regard to the production and supply of base oils. Moreover, Chevron is active in the market for crude oil (input for base oils) and the market for finished lubricants (for which base oils are an input). Chevron also produces additives, which are a further input for lubricants and can be considered a neighbouring market, as both base oils and additives are required for the production of finished lubricants. Therefore, this section will assess the market definition of (i) base oils, (ii) crude oil production, (iii) finished lubricants and (iv) additives.

4.1. Base Oils

4.1.1. Product market

(9) The American Petroleum Institute ("API") has created a classification of base oils that is widely used in the oil industry as a reference. The classification divides base oils into five groups, Group I, II, III, IV and V, depending on the specific physical characteristics. Group I, II and III oils are paraffinic base oils, Group IV oils are polyalphaolefines ("PAO"), which are synthetic oils, while Group V contains all other synthetic and mineral base oils, including naphthenic crude oils.[4] Both the quality and price of the base oil increase from Group I to II and from Group II to III because of the lower viscosity of the base oil. For the manufacture of lubricants, mainly Group II and Group III base oils are used.[5]

4.1.1.1. The Commission's previous practice

(10) The Commission has not previously investigated the markets for Group II and Group III base oils specifically, but investigated other base oil groups in previous decisions. In these decisions, the Commission concluded that API Group I base oils constitute a separate product market, due to a lack of substitutability of API Group I base oils with all other types of base oils.[6] In M.6360 – *Nynas / Shell / Harburg Refinery*, the Commission investigated Group V base oils and considered, within this group, a separate product market for the production of naphthenic base and process oils, as opposed to paraffinic base and process oils.[7] A further segmentation by end-application (industrial vs automotive) was not considered relevant given high supply-side substitutability.[8]

4.1.1.2. The Notifying Party's view

(11) The Notifying Party considers that the product market definition can be left open, as the Proposed Transaction will not raise any competition concerns. However, the Notifying Party submits that the base oil market could be further segmented between Group II and Group III base oils. It argues that technical requirements for Group II and Group III base oils generally do not overlap. Group II base oils are not substitutable in the majority of lubricant applications that require Group III use. Moreover, whereas Group II base oils are primarily used for blending conventional engine oil and industrial lubricants, Group III base oils are specifically used for

4 M.6360 – *Nynas / Shell / Harburg Refinery*, paragraphs 49-50.

5 See minutes of a call with a competitor of 15 December2021; see minutes of a call with a competitor of 10 December 2021.

6 M.9014 – *PKN Orlen / Grupa Lotos*, paragraph 1750; M.1383 – *Exxon / Mobil*, paragraph 310 et seq.

7 M.6360 – *Nynas / Shell / Harburg Refinery*, paragraph 128.

8 M.1383 – *Exxon / Mobil*, paragraph 310.

blending premium lubricants with long drain intervals and/or other performance attributes. Group II cannot meet modern specifications for very lightweight motor oils and other very light lubricants, which is where Group III is used.[9]

(12) The Notifying Party also submits that Group I and Group II base oils exercise competitive pressure on each other, as Group II base oils can substitute Group I base oils [>75]% of its applications.[10]

(13) The Notifying Party rejects a further sub-segmentation into "Group II+" or "Group III+" markets, arguing that these are marketing terms used by certain producers to indicate that the product in question is at the higher end of the viscosity index range applicable to its group. Moreover, Group III and Group III+ base oils are interchangeable and sold to the same lubricant customers and there is no official definition of the "+" marketing term and it is not recognised by API.[11]

4.1.1.3. The Commission's assessment

(14) The Commission's market investigation supported the Notifying Parties' view that separate markets exist for each of Group II and Group III base oil, without a further segmentation within each of these groups.

(15) From the demand-side perspective, a majority[12] of both customers and competitors replied that Group III base oil is generally not substitutable with Group II base oil.[13] Respondents who gave further explanations pointed out that Group III base oils are more expensive and of better quality. Moreover, applications of each Group II and Group III base oils differ. Notably, Group III base oils are mainly used for automotive applications.[14] Furthermore, replies suggest that although Group II is often technically substitutable with Group III base oil, this would not be economical given the difference in price between both groups of base oil.[15]

(16) The supply-side picture was mixed: some competitors explained that they can and do switch their production from Group II to Group III (although one mentioned that this was only possible for certain products and not all) and vice versa, others cannot, primarily because their production plants are established to produce either Group II or Group III base oils.[16]

(17) Concerning the Notifying Party's argument that Group I exerts competitive pressure on Group II base oils, the market investigation did not support this claim. A majority of customers considered that Group II base oil is not substitutable with Group I base

9 Form CO, paragraph 137.

10 Form CO, paragraph 138.

11 Form CO, paragraphs 129 *et seq*.

12 "Majority" in this Decision stands for more than 50% and "vast majority" stands for more than 70% of the participants in the market investigation who replied to the question (excluding those that replied "other", or "I do not know").

13 Replies to question 4 of questionnaire Q2 to customers and question 4 of Q1 to competitors.

14 Replies to question 4.1 of questionnaire Q2 to customers and question 4.1 of Q1 to competitors. A customer estimates that approximately 90% of Group III base oils are used for automotive lubricants. Minutes of call with a customer on 15 December 2021, para. 11.

15 Replies to question 5 and 5.1 of questionnaire Q2 to customers and question 5 and 5.1 of Q1 to competitors.

16 Replies to question 9 of Q1 to competitors.

oil. Competitors' replies were inconclusive, their explanations however indicate that in some industrial applications, Group II can indeed be used to substitute Group I base oils. In automotive applications, Group I could not be used, however ("*Group I base oil properties are not compatible with automotive applications requiring compatibility with modern emissions control devices for compliance with EU Regulation*.").[17] In any case, given the price differences (see paragraph (9)), substituting Group I with Group II would not be economical. The Commission will therefore maintain its practice and consider Group I and Group II as separate product markets.

(18) The Commission also investigated whether the markets for Group II and Group III base oils should be further sub-segmented by grade of base oil. In this respect, a majority of customers replied that generally, different grades of Group II base oil are substitutable with other Group II base oil grades.[18] This substitutability is however limited for base oils used in automotive applications. This is due to a specificity of the base oil and lubricants industries: automotive original equipment manufacturers ("OEMs") are closely involved in the production value chain, specifying technical requirements with base oil producers, additive suppliers and blenders. Therefore, for the production of automotive lubricants in particular, OEMs typically require the use of certain base oils that have received prior approval/qualification. The lubricant manufacturer will therefore be obliged to continue using the qualified base oil, for the lifetime of the lubricant. However, no specific grades or types within each base oil group appear to constitute sub-segments of these markets. Although some of the Parties' internal documents mention categories like Group III and Group III+, these are not commonly used industry-wide terms. Even where two competitors each produce a base oil they label "Group III+", the quality and properties might vary between the two products. The Commission therefore considers that a further sub-segmentation of the markets for Group II and Group III oils is not warranted.

(19) Overall, the market investigation thus confirmed that Group II and Group III constitute separate markets. In conclusion, the Commission will analyse the effects of the Proposed Transaction on (i) a market for Group II and (iii) a market for Group III base oils.

4.1.2. Geographic market

4.1.2.1. The Commission's previous practice

(20) The Commission has not previously investigated the geographic scope of the markets for Group II and Group III specifically, but has done so for other base oil groups. In these previous decisions, the Commission considered the Group I base oils market to be EEA-wide[19] or at least EEA-wide,[20] and the market for naphthenic base and process oils for industrial application to be EEA-wide in scope.[21]

[17] Replies to question 6 and 6.1 of questionnaire Q2 to customers and question 6 and 6.1 of Q1 to competitors.

[18] Replies to question 7 of questionnaire Q2 to customers.

[19] M.9014 – *PKN Orlen / Grupa Lotos*, paragraph 1757 *et seq*.

[20] M.1383 – *Exxon / Mobil*, paragraphs 322 *et seq*.

[21] M.6360 – *Nynas / Shell / Harburg Refinery*, paragraph 231.

4.1.2.2. The Notifying Party's view

(21) The Notifying Party considers the relevant market for base oils to be global in scope. On the one hand, various suppliers (e.g. Chevron, Saudi Aramco) sell base oils into the EEA without any local production capacities and, on the other hand, many suppliers with local production sites in the EEA export base oils (e.g. ExxonMobil and ILBOC. Moreover, the Notifying Party estimates that a substantial portion of base oil supply in the EEA is imported and mentions that base oil prices in the United States and the EEA tend to move in parallel and in the same direction.[22] However, in the Notifying Party's view, the relevant geographic market can be left open, as the Proposed Transaction will not raise any concerns irrespective of the market segmentation.

4.1.2.3. The Commission's assessment

(22) The Commission's market investigation did not provide clear evidence as to whether the markets for Group II and Group III base oils are EEA-wide or global. A majority of customers indicated that their suppliers are located worldwide and a vast majority of competitors indicated that their customers are located worldwide, regardless of where the respondents' respective production facilities are.[23] However, less than 40% of customers indicated that their suppliers are mainly located in the region where their production facilities are located[24] and many of these customers also indicated that they prefer suppliers whose production facilities are located in the same region, for reasons of supply security, logistics costs and potential tariffs. These factors are however less important than quality and approvals.[25] A majority of customers hence considered geographic closeness of their base oil suppliers to be "somewhat important".[26] When asked whether prices for base oil produced in the EEA differ from those for imported base oil, customers' replies were inconclusive, with about one half finding that prices for base oil produced in the EEA are different than for imports (for instance where tariffs are in place) and another half finding no differences in price. A customer explained: "*The value of a product is mainly determined by technical performance and underlying approvals. Hence, different pricing is possible for different products, however mainly driven by the technical performance and the underlying approvals of the specific base stock. Production locations and imposition of potential tariffs can though be cost relevant and therefore play a role*".[27] However, a majority of competitors indicated that prices differ depending on the region.[28]

(23) In any case, for the purpose of this decision the exact geographic market definition can be left open, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

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22 Form CO, paragraphs 141 *et seq*.

23 Replies to question 11 of questionnaire Q2 to customers and question 15 of questionnaire Q1 to competitors.

24 Replies to question 11 of questionnaire Q2 to customers.

25 Replies to question 13.1 of questionnaire Q2 to customers.

26 Replies to question 13 of questionnaire Q2 to customers.

27 Replies to question 12 of questionnaire Q2 to customers.

28 Replies to question 16 of questionnaire Q1 to competitors.

(24) In conclusion, the Commission will analyse the effects of the Proposed Transaction on the market for base oils at EEA and worldwide level.

4.2. Crude Oil Production

4.2.1. Product market

4.2.1.1. The Commission's previous practice

(25) In previous decisions, the Commission considered a separate market for the production and wholesale of crude oil.[29]

4.2.1.2. The Notifying Party's view

(26) The Notifying Party does not contest the Commission's previous practice.[30]

4.2.1.3. The Commission's assessment

(27) The Commission will retain the product market definition provided in its past decisional practice as described in paragraph (25). The market investigation did not produce any evidence indicating that the Commission's case practice is no longer valid. The Commission will therefore analyse the effects of the Proposed Transaction on the market for the production and wholesale of crude oil.

4.2.2. Geographic market

4.2.2.1. The Commission's previous practice

(28) Previously, the Commission considered the relevant market for the production and wholesale of crude oil to be global in scope.[31]

4.2.2.2. The Notifying Party's view

(29) The Notifying Party does not contest the Commission's previous practice and considers that the relevant market can be left open, as the Proposed Transaction will not raise any concerns irrespective of the market segmentation.[32]

4.2.2.3. The Commission's assessment

(30) The Commission will retain the geographic market definition provided in its past decisional practice as described in paragraph (28). The market investigation did not produce any evidence indicating that the Commission's case practice is no longer valid. The Commission will therefore analyse the effects of the Proposed Transaction on a global market for the production and wholesale of crude oil.

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29 M.7318 – *Rosneft / Morgan Stanley Global Oil Merchanting Unit*, paragraph 11 and cases cited therein.

30 Form CO, paragraph 146.

31 M.7318 – *Rosneft / Morgan Stanley Global Oil Merchanting Unit*, paragraph 11 and cases cited therein.

32 Form CO, paragraph 148.

4.3. Finished lubricants

4.3.1. Product market

4.3.1.1. The Commission's previous practice

(31) In previous decisions, the Commission segmented the finished lubricants market into mineral, semi-synthetic and synthetic lubricants, or alternatively by application into automotive, industrial, marine and aviation lubricants.[33] Moreover, in M.8492 – *Quaker / Global Houghton*, the Commission defined further sub-segments of the industrial lubricant market.[34]

4.3.1.2. The Notifying Party's view

(32) The Notifying Party considers that the relevant product market definition can be left open, as the Proposed Transaction will not raise competition concerns irrespective of the market segmentation.[35]

4.3.1.3. The Commission's assessment

(33) In the market investigation, a majority of customers and competitors replied that automotive, industrial, marine and aviation lubricants should be considered as separate product markets.[36] Respondents who gave an explanation for the distinction replied that formulations, characteristics, quality and components differ between these categories.[37]

(34) For the purpose of this decision, the exact product market definition can be left open between an overall market for lubricants and separate markets for automotive, industrial, marine and aviation lubricants, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(35) In conclusion, the Commission will analyse the effects of the Proposed Transaction for (i) an overall market for lubricants and (ii) separate markets for automotive, industrial, marine and aviation lubricants.

4.3.2. Geographic market

4.3.2.1. The Commission's previous practice

(36) The Commission has previously considered the market for lubricants and its various sub-segments to be national,[38] at least national,[39] and EEA-wide or global in scope.[40]

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33 M.9014 – *PKN Orlen / Grupa Lotos*, paragraph 1770 *et seq.;* M. 8261 – *Lanxess / Chemtura*, paragraph 23; M.5927 – *BASF / Cognis*, paragraphs 54-58.

34 M.8492 – *Quaker / Global Houghton*, paragraphs 16 *et seq*.

35 Form CO, paragraphs 154-155.

36 Replies to question 9 of questionnaire Q2 to customers and question 13 of questionnaire Q1 to competitors.

37 Replies to question 9.1 of questionnaire Q2 to customers.

38 M.9014 – *PKN Orlen / Grupa Lotos*, paragraph 1801 *et seq*.

39 M.1891 – *BP Amoco/Castrol*, paragraphs 18-22; M.5927 - *BASF/Cognis*, paragraphs 59 and 62.

4.3.2.2. The Notifying Party's view

(37) The Notifying Party considers that the relevant geographic market definition can be left open as the Proposed Transaction will not raise competition concerns irrespective of the market segmentation.[41]

4.3.2.3. The Commission's assessment

(38) The Commission's market investigation did not provide clear evidence as to whether the markets for lubricants are EEA-wide or global. A majority of customers considers the markets EEA-wide whereas a majority of competitors considers them as worldwide. In any case, only a minority of each of customers and competitors considered the markets as national.[42]

(39) For the purpose of this decision the exact geographic market definition can be left open, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(40) In conclusion, the Commission will analyse the effects of the Proposed Transaction on the market for lubricants at national, EEA and worldwide level.

4.4. Additives

4.4.1. Product market

4.4.1.1. The Commission's previous practice

(41) In previous decisions, the Commission has left open whether the two principal categories of additives, viscosity index improvers ("VI improvers") and detergent inhibitors ("DIs"), constitute separate markets.[43] The Commission explained that both are essential components of an oil lubricant, but are not substitutable with one another. Their functions differ: DI packages suspend oil contaminants and combustion by-products and prevent oxidation of the oil with the resultant formation of varnish and sludge deposits. VI improvers modify the viscometric characteristics of lubricants by reducing the rate of thinning with increasing temperature and the rate of thickening with low temperatures.[44]

(42) The Commission also left open whether all DI packages constitute one product market or whether there are separate product markets for the individual additive components.[45]

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40 M.8492 – *Quaker / Global Houghton*, paragraphs 106, 109 and 112; M.8261 – *Lanxess / Chemtura*, paragraph 59.

41 Form CO, paragraphs 154-155.

42 Replies to question 14 of questionnaire Q2 to customers and question 17 of questionnaire Q1 to competitors.

43 M.8261 – *Lanxess / Chemtura*, paragraph 10; M.1383 – *Exxon / Mobil*, paragraph 286; M.7691 – *Apollo / OMG*, paragraphs 30–32.

44 M.7691 – *Apollo / OMG*, paragraph 30.

45 M.8261 – *Lanxess / Chemtura*, paragraph 10 *et seq*.

4.4.1.2. The Notifying Party's view

(43) The Notifying Party considers that the relevant product market definition can be left open, as the Proposed Transaction will not raise any competition concerns.[46]

4.4.1.3. The Commission's assessment

(44) In the market investigation, a majority of customers and competitors agreed that viscosity index improvers and detergent inhibitors should be considered as separate product markets.[47] Many of the respondents who gave an explanation for the distinction replied that the components and producers are different.[48]

(45) For the purpose of this decision, the exact product market definition can be left open between an overall market for additives and separate markets for viscosity index improvers and detergent inhibitors, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(46) In conclusion, the Commission will analyse the effects of the Proposed Transaction for an overall market for additives.[49]

4.4.2. Geographic market

4.4.2.1. The Commission's previous practice

(47) The Commission has previously considered the market for lubricant additives and its potential sub-segments to be at least EEA-wide in scope, and possibly global.[50]

4.4.2.2. The Notifying Party's view

(48) The Notifying Party considers that the relevant geographic market definition can be left open, as the Proposed Transaction will not raise any concerns irrespective of the market segmentation even if it was national in scope.[51]

4.4.2.3. The Commission's assessment

(49) The Commission's market investigation did not provide clear evidence as to whether the markets for additives are EEA-wide or global. Most competitors replied that geographic markets for the different additives i.e. viscosity index improvers and detergent inhibitors are worldwide in scope, whereas customers' replies were divided

46 Form CO, paragraphs 151, 155.

47 Replies to question 10 of questionnaire Q2 to customers and question 14 of questionnaire Q1 to competitors.

48 Replies to question 10.1 of questionnaire Q2 to customers.

49 The Target does not produce any additives. The Notifying Party has confirmed that its market shares do not exceed 30% under any plausible product and geographic market definition. (Form CO, paragraph 151).

50 M.8261 – *Lanxess / Chemtura*, paragraph 45; M.1383 – *Exxon / Mobil*, paragraph 331; M.1137 – *Exxon / Shell*, paragraphs 17-18.

51 Form CO, paragraphs 151, 155.

between EEA-wide and global. In any case, only a minority of each of customers and competitors considered the markets as national.[52]

(50) In any case, for the purpose of this decision the exact geographic market definition can be left open, as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

(51) In conclusion, the Commission will analyse the effects of the Proposed Transaction on the market for additives at EEA and worldwide level.

5. COMPETITIVE ASSESSMENT

(52) The concentration gives rise to two horizontally affected markets, (i) for Group II and (ii) Group III base oils, as well as several vertically affected markets: (i) Group III base oils upstream and lubricants downstream, (ii) Group II base oils upstream and lubricants downstream and (iii) crude oil upstream and Group II and Group III base oils downstream. Furthermore, this Decision will investigate conglomerate effects resulting from the Parties activities in neighbouring markets (i) Group II and Group III base oils and (ii) base oils and additives.

(53) Some market participants voiced concerns about potential input foreclosure for Group III base oils in the EEA, given Chevron's presence in the downstream lubricants markets. Another market participant voiced concerns about foreclosure resulting from tying or bundling of Group II and Group III base oils and/or of base oils and additives. The Commission has investigated these theories of harm and has concluded that the concerns are not substantiated, as will be outlined below.

5.1. Horizontally affected markets

5.1.1. Legal framework

(54) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.

(55) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. The Horizontal Merger Guidelines list a number of factors[53] which may influence whether or not significant non-coordinated effects are likely to result from a merger. These include the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present

[52] Replies to question 14 of questionnaire Q2 to customers and question 17 of questionnaire Q1 to competitors.

[53] Horizontal Merger Guidelines, paras 24 *et seq*.

for significant non-coordinated effects to be likely. The list of factors, any one of which is not necessarily decisive, is also not an exhaustive list.

5.1.2. Group II base oils

5.1.2.1. The Notifying Party's view

(56) The Notifying Party submits that the Transaction will not result in horizontal competition concerns, given that the Parties are not close competitors (their product portfolio being largely complementary), their combined market shares do not indicate market power and multiple strong competitors remain active. The Notifying Party further submits that Group II expertise and technology is widespread and accessible, car manufacturers have significant countervailing buyer power and that excess supply on the global base oil market subjects the Parties to constant downward pricing pressure.[54]

(57) Within Group II, the Parties target different applications. Chevron's focus is on motor oil applications whereas the Target's focus is on industrial lubricants and applications such as brake & shock absorber fluids. In the EEA, Chevron sells one of its Group II base oils for non-lubricant applications (e.g. transformer oils, process oils and shock absorber fluids), but not to the same customers as the Target.[55]

(58) Moreover, Chevron's EEA Group II base oils shares and revenues have been dropping consecutively since 2018, mainly resulting from strong competition from ExxonMobil's new Group II production facility in Rotterdam.[56] […] the quota for U.S. Group II base oil imports will expire and 3.7% duties will apply for Group II base oils produced in the US as of H2 2022.[57]

5.1.2.2. The Commission's assessment

(59) On the basis of the information available to it and in light of the results of the market investigation, the Commission considers that the Transaction is unlikely to raise competition concerns for the following reasons.

(60) First, the Parties have a moderate combined share and the increment resulting from the Proposed Transaction is small. In the EEA market for Group II base oils, Chevron had a market share of [30-40]% and the Target of [0-5]% in terms of volume sold in 2020, resulting in a combined market share of [30-40]%. In terms of production capacity at global level, Chevron's production capacity in Group II base oils in 2020 represented [10-20]% of total global production capacity, while the Target's production capacity represented only [0-5]%[58] (and only [0-5]% of total production capacity in the EEA, where Chevron has no production capacity at all).[59]

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54 Form CO, paragraph 158 *et seq*.

55 Form CO, paragraph 161.

56 Form CO, paragraph 165.

57 Form CO, paragraph 165.

58 The Notifying Party submits that a global overview of competitors' volumes sold is not available. In the absence of global market shares based on volumes sold, global capacity figures were submitted as the best proxy for global volume sold figures (Form CO, footnote 10).

59 Form CO, Confidential Annex 6.1.

(61) Second, neither the Parties themselves, nor market participants, appear to consider the Parties close competitors. In the Commission's market investigation, none of the respondents mentioned the other party, when asked who the five closest competitors of Chevron and the Target are. A majority of respondents named ExxonMobil as Chevron's closest competitor and SK Lubricants as the Target's closest competitor.[60] The decisive difference many respondents pointed out is that Chevron focuses on production of Group II base oil (like ExxonMobil) whereas the Target focuses on production of Group III base oil.[61] The Parties' internal documents about their respective main competitors also do not mention the other Party.

(62) Third, a number of credible alternatives to the Parties will remain active on the market post-transaction, notably market leader ExxonMobil with [40-50]% of Group II base oil sales in the EEA in 2020 and [10-20]% of global production capacity for Group II base oils and [60-70]% of EEA production capacity. Other competitors with production capacity in the EEA are SK Lubricants with [5-10]% and Repsol with [0-5] % in 2020 (and similar market shares in terms of volumes sold in the EEA, [5-10]% and [0-5]% respectively).[62]

(63) Fourth, in the market investigation a majority of both customers and competitors replied that they expect that the Proposed Transaction will not have an impact on the prices[63] and quality[64] of Group II base oils. For example, one customer noted: "*We do not expect a significant impact as from our perspective the product portfolios from Chevron and Neste are different due to the aspect that Chevron's Group II base oils showing different technical properties compared to Neste's high quality Group II base oils. Thus, we do not expect a change in approach in general and on the price side specifically*."[65]

(64) Finally, it should be noted that different Group II base oils need to be approved by OEMs in terms of the particular specifications needed for its end use. In this context, customers in the market investigation pointed out that only those competitors with the required OEM approvals are potential alternatives to their current supplier.[66] A minority of the customers indicated in the market investigation to have switched their Group II supplier in the last 5 years.[67]

(65) On balance, given the limited increment and the fact that the Parties are not close competitors, the Commission concludes that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the supply of Group II base oil in the EEA.

60 Replies to question 16 and 17 of questionnaire Q2 to customers and question 19 and 20 of questionnaire Q1 to competitors.

61 Replies to question 18 of questionnaire Q2 to customers and question 21 of questionnaire Q1 to competitors.

62 Form CO, Confidential Annex 6.1.

63 Replies to question 36 of questionnaire Q2 to customers and question 36 of questionnaire Q1 to competitors.

64 Replies to question 38 of questionnaire Q2 to customers and question 38 of questionnaire Q1 to competitors.

65 Reply to question 36 of questionnaire Q2 to customers.

66 Replies to question 26.1 of questionnaire Q2 to customers.

67 Replies to question 25 of questionnaire Q2 to customers.

5.1.3. Group III base oils

5.1.3.1. The Notifying Party's view

(66) With respect to Group III base oils, the Notifying Party argued that it does not currently market Group III base oil, [details on Chevron's supply]. The Notifying Party argues that therefore, Chevron is thus not a competitor to the Target from the customers' perspective, and hence no alternative source of supply of Group III base oils which the Proposed Transaction would remove.[68]

(67) Moreover, the combined entity will have a global production capacity of [5-10]% with an increment of less than [0-5]%, much less than the main competitors SK Lubricants ([20-30]%), Shell ([10-20]%), Saudi Aramco ([5-10]%) and ADNOC ([5-10]%).[69] As Chevron has no Group III base oil production in the EEA, the Proposed Transaction would not result in an increment.[70]

(68) In any event, the Notifying Party argues that the Parties' combined market shares do not indicate market power and multiple strong competitors remain active. The Notifying Party further submits that Group III expertise and technology is widespread and accessible, car manufacturers have significant countervailing buyer power and that excess supply on the global base oil market subjects the Parties to constant downward pricing pressure.[71]

5.1.3.2. The Commission's assessment

(69) On the basis of the information available to it and in light of the results of the market investigation, the Commission considers that the Transaction is unlikely to raise competition concerns for the following reasons.

(70) First, the Parties have a moderate combined share and the increment resulting from the Proposed Transaction is small. If Chevron's Group III volumes are allocated to Chevron [details on Chevron's supply], Chevron held a market share of [0-5]% in 2020 and the Target of [10-20]% in terms of volumes sold, resulting in a combined market share of [20-30]% at EEA-level. Although the Target has the second highest production capacity in the EEA, with [30-40]% in 2020, this corresponds to only [5-10]% of total global production capacity for Group III base oils. Chevron does not have production capacity in the EEA and [0-5]% of global production capacity for Group III base oils.[72]

(71) Second, as outlined in paragraph (61), neither the Parties themselves, nor market participants, appear to consider the Parties close competitors.

(72) Third, strong competitors remain in the market, notably market leader SK Lubricants with [20-30]% of Group III volumes sold in the EEA in 2020 and [30-40]% in terms of EEA production capacity (and [20-30]% of global production capacity). Also Repsol has production capacity in the EEA ([10-20]%). However, Repsol does not

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68 Form CO, paragraph 150.
69 Form CO, paragraph 166.
70 Form CO, paragraph 167.
71 Form CO, paragraph 158 *et seq*.
72 Form CO, Confidential Annex 6.1.

appear to be considered an alternative supplier of Group III base oils, as it does not generally have the required approvals.[73] This is also the case for several competitors that export Group III to the EEA (Shell with [5-10]% and ADNOC, Saudi Aramco, Sinopec and S-Oil with market shares of [0-5]%). The options for switching are therefore relatively limited.[74] However, some market participants referred to new entrant ADNOC as credible alternative supplier,[75] even more so in future ("*ADNOC's Group III is relatively new to the market, so it has fewer approvals. This is expected to change over the coming years as more approvals are generated by both ADNOC and users of ADNOC base stocks.*"[76]). Some market participants also expect new entries in the Group III base oil market.[77]

(73) Fourth, although options for switching are relatively limited, customers do switch suppliers, as confirmed by the market investigation. About half of the customers indicated in the market investigation to have switched their Group III supplier in the last 5 years.[78]

(74) Finally, in the market investigation a majority of both customers and competitors expect that the Proposed Transaction will not have an impact on the prices[79] and quality[80] of Group III base oils.

(75) On balance, given the limited increment and the fact that the Parties are not close competitors, the Commission concludes that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the supply of Group III base oil in the EEA.

5.2. Vertically affected markets

(76) Chevron is active in the production of crude oil, upstream of the base oils market, and finished lubricants, downstream. The Proposed Transaction therefore gives rise to four vertically affected markets: (i) Group III base oils upstream and lubricants downstream, (ii) Group II base oils upstream and lubricants downstream and (iii) crude oil upstream and Group II and Group III base oils[81] downstream.

5.2.1. Legal framework

(77) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or

73 Replies to question 17 of questionnaire Q2 to customers and question 20 of questionnaire Q1 to competitors. Minutes of call with a customer on 2 December 2021, para. 10.

74 Replies to question 27.1 of questionnaire Q2 to customers.

75 Replies to questions 17, 20 and 27 of questionnaire Q2 to customers.

76 Minutes of a call with a customer on 15 December 2021, footnote 1.

77 Replies to question 28.1 of questionnaire Q1 to competitors.

78 Replies to question 25 of questionnaire Q2 to customers.

79 Replies to question 37 of questionnaire Q2 to customers and question 37 of questionnaire Q1 to competitors.

80 Replies to question 39 of questionnaire Q2 to customers and question 39 of questionnaire Q1 to competitors.

81 These two vertically affected markets will be discussed together.

eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[82]

(78) In assessing the likelihood of an anticompetitive *input* foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[83] These three conditions are cumulative so that the absence of any of them is sufficient to rule out the likelihood of anti-competitive input foreclosure.[84]

(79) In assessing the likelihood of an anticompetitive *customer* foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[85]

5.2.2. Group III Base oil (upstream) – finished lubricants (downstream)

(80) The Target's production capacity for Group III base oil in the EEA exceeds 30% ([30-40]% in 2020). Chevron's market share in finished lubricants is [0-5]% in the EEA and below 30% in the markets for automotive, industrial, and aviation lubricants.[86] Chevron's market shares also remain below 30% at national level under any plausible segmentation. Other than the Target, only SK Lubricants ([30-40]%) and Repsol ([10-20]%) have production capacity for Group III base oil in the EEA.

(81) The Commission received comments by some customers that Chevron might cover its own demand for Group III base oil by supply from the Target, leaving limited volumes for competitors. These customers argued that this would allow Chevron to sell the Target's remaining output of Group III base oil produced in Europe at higher prices, resulting in the two remaining competitors to adjust their prices upwards in response.

5.2.2.1. The Notifying Party's view

(82) The Notifying Party claims that no foreclosure concerns arise, given that Chevron is already vertically integrated, the level of which will not significantly change as a

82 Non-horizontal Merger Guidelines, paragraph 18.

83 Non-horizontal Merger Guidelines, paragraph 32.

84 Case T – 370/17 KPN v Commission, EU:T:2019:354, para 119.

85 Non-horizontal Merger Guidelines, paragraph 59.

86 The Target does not produce any lubricants. The Notifying Party has confirmed that its market shares do not exceed 30% (with the exception of marine lubricants) under any plausible product and geographic market definition. (Form CO, paragraph 154). Chevron's market share in marine lubricants in the EEA is approximately [40-50]% (Form CO, paragraph 70). However, marine lubricants generally require Group I base oils and never Group III base oils as inputs. Whereas some 20% of marine lubricants are produced with Group II base oils, the Group II type of products that the Target produces are not used with additives targeting marine application (Form CO, paragraph 71). In consequence, there is no vertical relationship between marine lubricants and any market where the Target is active. Therefore this sub-segment will not be further discussed in this Decision.

result of the Proposed Transaction.[87] Given Chevron's limited finished lubricant presence and the current and expected growth of demand for Group III, Chevron has no intention or incentive to internalise the Target's Group III base oil production, nor to reduce or cease its supply to existing and future third party base oils customers.[88] In any event, numerous strong competitors remain active both in the upstream and in the downstream markets.[89]

(83) Moreover, the Notifying Party submits that the Proposed Transaction will not affect the market structure in the EEA, as Chevron's lubricant business is currently already sourcing approximately [>50]% of its global procured Group III and [>50]% of its EEA procured Group III base oil needs from the Target.[90]

(84) Finally, the Notifying Party argues that OEMs, which play an important role in the lubricants supply chain, as well as additive suppliers usually qualify their lubricant products with various base oil suppliers in order to have the ability to multisource or switch suppliers.[91]

5.2.2.2. The Commission's assessment

(A) Input foreclosure

(85) The Commission considers that Chevron post-transaction will not have the ability or incentive to engage in input foreclosure strategies for Group III base oils, for the reasons stated below.

(86) Chevron does not have the *ability* to foreclose access to Group III base oils. First, this would require a significant degree of market power in the upstream market.[92] As outlined in Section 5.1.3.2, the Target's Group III production capacity is moderate and strong competitors, notably market leader SK remains active in the upstream market for Group III base oils.

(87) Second, in the EEA Chevron's only lubricant blending facility already sources Group III [>50%] from the Target, so that the Proposed Transaction would not have an impact on supply structures in the EEA. Outside of the EEA, Chevron's lubricant business already covers [>50%] of its internal Group III demand with supplies from the Target. Chevron's 2022 Group III Procurement Commitments indicate the Target as [>50%] supplier of Chevron's North America lubricant blending facilities,[93] as was also the case in 2020.[94] Even if Chevron further increased its sourcing outside of the EEA the effect on supply structures would be limited.

(88) Third, Chevron's lubricant blending facilities operate [details on capacity].[95] If Chevron increased its sourcing of Group III base oils from the Target even further

[87] Form CO, paragraph 190.
[88] Form CO, paragraph 202.
[89] Form CO, paragraph 204.
[90] Form CO, paragraph 8.
[91] Form CO, paragraph 8.
[92] Non-horizontal Merger Guidelines, paragraph 61.
[93] Form CO, Table 22.
[94] Form CO, Tables 21 and 24.
[95] Form CO, table 32.

post-transaction, its lubricant blending facilities would absorb even less Group III base oils from competitors. These additional volumes would be available for other customers. In consequence, Chevron would not be able to foreclose access to Group III base oils even if it further increased its sourcing outside of the EEA, or sourced exclusively from the Target.

(89) Chevron does not have the *incentive* to foreclose access to Group III base oils. First, Chevron's market share in lubricants is small, suggesting that benefits from an input foreclosure strategy would be limited. In 2020, Chevron's market share in finished lubricants in the EEA was [0-5]%, compared to [10-20]% held by each of Shell and TotalEnergies, and [10-20]% by each of BP and ExxonMobil.[96] At global level, Chevron's market share is only slightly higher ([0-5]% in 2018).[97]

(90) Second, Chevron's purchases of the Target's Group III base oils only constitute[<10]% of the Target's total production capacity.[98] Therefore, Chevron would forego [>90]% of the profits from Group III sales if it tried to foreclose access to Group III inputs. Given that Chevron's profit margins for the sale of Group III base oil far exceed its margins for the sale of any type of lubricants,[99] Chevron is therefore likely to continue selling to third parties. For this reason, Chevron also does not have an incentive to invest to increase the capacity of its lubricant blending facilities, which would be necessary in order to absorb a higher share of total global Group III output.

(91) Third, in the short to medium term, customers are locked into their supply contracts with suppliers that offer base oils with the respective OEM approvals (see paragraph (18)). This also goes for Chevron as a buyer of Group III base oils: it will have to continue sourcing from its current suppliers (the Target and third parties approved by OEMs), so that sufficient quantities of the Target's output will remain available for the sale to third parties.

(92) Fourth, current industry practice suggests that vertical integration does not have a significant impact on supply structures. There is no evidence of exclusive internal sourcing in the industry, although many players in the industry are active in both base oils and lubricants, such as Shell, ExxonMobil, Total, Petronas and Repsol.[100] In the words of a customer: "*Many competitors are active in both base oils and lubricants, but this was never a problem and the industry practice is to run these businesses independently*."[101] Such vertically integrated companies could hence cover their needs internally, but continue to supply/source from third parties. The results of the market investigation indicate that a vast majority of customers source Group III base oil from at least two or more, a majority from three or more suppliers.[102] Moreover, several market participants also indicated that up- and

96 Reply to Request for Information 5 of 20 January 2022.
97 Form CO, Table 28.
98 Form CO, paragraph 8.
99 Reply to Request for information 5 of 20 January 2022.
100 Minutes of a call with a customer of 15 December 2021, paragraph 18.
101 Idem.
102 Replies to question 20 of questionnaire Q2 to customers.

downstream businesses tend to be operated with Chinese walls.[103] The Parties confirmed that this is the case for Chevron.[104]

(93) Finally, in the market investigation, most customers consider that the Proposed Transaction will have no impact, followed by a considerable number of customers who expect a positive impact,[105] including more investment and interest in base oil development, more competition and lower prices.[106]

(94) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to Group III base oil post-transaction.

(B) Customer foreclosure

(95) The Commission considers that Chevron post-transaction will also not have the ability or incentive to engage in customer foreclosure strategies, for the reasons stated below.

(96) First, Chevron does not have the *ability* to foreclose access to suppliers of Group III base oils to customers, as this would require a significant degree of market power in the downstream market.[107] In 2020, Chevron's market share in finished lubricants in the EEA was [0-5]%, compared to [10-20]% held by each of Shell and TotalEnergies, and [10-20]% by each of BP and ExxonMobil.[108] At global level, Chevron's market share is only slightly higher ([0-5]% in 2018).[109] Chevron is therefore not a sufficiently important buyer to be able to prevent suppliers from selling Group III base oils. Even if Chevron sourced exclusively from the Target, suppliers would still have access to customers representing more than [90-100]% of EEA and global demand respectively.

(97) Second, the Proposed Transaction will not have a significant effect on supply structures of Group III base oils, as explained in paragraph (87). As Chevron already sources [>90%] of its Group III needs from the Target, its importance as a customer for third parties is even lower than its market share in the lubricants market suggests.

(98) Third, Chevron does not have the *incentive* to source Group III base oils exclusively from the Target. As explained in paragraph (91), the Commission considers that the role of approvals in base oils would prevent Chevron from switching to sourcing entirely from the Target. In order to maintain its lubricants sales, Chevron will have to continue buying from suppliers other than the Target post-transaction.

(99) Fourth, as explained in paragraph (92), experience suggests that vertical integration has no significant impact on Group III supply structures for base oils.

[103] Minutes of call with a customer on 9 December 2021, para. 18. Minutes of call with a customer on 15 December 2021, para 18.

[104] Form CO, footnote 137.

[105] Replies to question 35 of questionnaire Q2 to customers.

[106] Replies to question 35.1 of questionnaire Q2 to customers.

[107] Non-horizontal Merger Guidelines, paragraph 61.

[108] Reply to Request for Information 5 of 20 January 2022.

[109] Form CO, Table 28.

(100) Finally, a vast majority of competitors replied that they expect that the Proposed Transaction will have no impact.[110]

(101) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to customers of Group III base oils post-transaction.

(C) Conclusion on input and customer foreclosure

(102) Based on the considerations above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement in relation to the vertical link between the market for Group III base oils and the markets for finished lubricants.

5.2.3. Group II Base oil (upstream) – finished lubricants (downstream)

(103) In the market for Group II base oils, the Parties' market share is [30-40]%. Chevron's EEA market shares in lubricants overall are [0-5]% and below 30% for automotive, industrial, marine and aviation lubricants. Chevron's market shares also remain below 30% at national level under any plausible segmentation.

5.2.3.1. The Notifying Party's view

(104) The Notifying Party claims no foreclosure concerns arise, given the very low market share and the presence of strong competitors in the downstream market. Moreover, Chevron does not source the type of Group II base oils that the Target produces.[111]

5.2.3.2. The Commission's assessment

(A) Input foreclosure

(105) The Commission considers that Chevron post-transaction will not have the ability or incentive to engage in input foreclosure strategies for Group II base oils, for the reasons stated below.

(106) First, Chevron does not have the *ability* to foreclose access to Group II base oils, as this would require a significant degree of market power in the upstream market.[112] As outlined in Section 5.1.2.2, this is not the case. The Parties' combined Group II production capacity is moderate and strong competitors, notably market leader ExxonMobil, remain active in the upstream market for Group II base oils.

(107) Second, Chevron does not have the *incentive* to foreclose access to Group II base oils. Chevron is already active in Group II base oils and the increment resulting from the Proposed Transaction is only [0-5]% (in terms of volume sold; and even smaller in terms of production capacity), so that its incentives are unlikely to change. Chevron currently only uses a third of its Group II base oil production for its own production of lubricants.[113] Chevron also sources a third of its needs of Group II

[110] Replies to question 35 of questionnaire Q1 to competitors.

[111] Form CO, paragraphs 228 *et seq*.

[112] Non-horizontal Merger Guidelines, paragraph 35.

[113] Form CO, Table 18.

base oils from third parties.[114] This suggests that Chevron does not have an incentive to stop or significantly limit supply to third parties pre- or post-transaction.

(108) Third, although approvals do not play as strong a role as in Group III base oils, they also pose a significant constraint to changing suppliers in Group II base oils (see paragraph (18)). Chevron will have to continue sourcing Group II base oils from its current suppliers, so that sufficient quantities of the Parties' Group II output will remain available for the sale to third parties.

(109) Fourth, current industry practice suggests that vertical integration does not have a significant impact on supply structures. There is no evidence of exclusive internal sourcing in the industry, although many players in the industry are active in both base oils and lubricants. They could hence cover their needs internally, but continue to supply/source from third parties. The results of the market investigation indicate that a majority of customers source Group II base oil from two or more suppliers.[115] This indicates that vertically integrated companies do not have an incentive to cover their needs with internal production. Moreover, several market participants also indicated that up- and downstream businesses tend to be operated with Chinese walls.[116] The Parties confirmed that this is the case for Chevron.[117]

(110) Finally, in the market investigation, most customers consider that the Proposed Transaction will have no impact, followed by a considerable number of customers who expect a positive impact,[118] including more investment and interest in base oil development, more competition and lower prices.[119]

(111) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to Group II base oil post-transaction.

(B) Customer foreclosure

(112) The Commission considers that Chevron post-transaction will also not have the ability or incentive to engage in customer foreclosure strategies, for the reasons stated below.

(113) First, Chevron does not have the *ability* to foreclose access for suppliers of Group II base oils to customers, as this would require a significant degree of market power in the downstream market.[120] In 2020, Chevron's market share in finished lubricants in the EEA was [0-5]%, compared to [10-20]% held by each of Shell and TotalEnergies, and [10-20]% by each of BP and ExxonMobil.[121] At global level, Chevron's market share is only slightly higher ([0-5]% in 2018).[122] Chevron is therefore not a sufficiently important buyer to be able to prevent suppliers from selling Group II base oils. Even in the hypothetical scenario in which Chevron

114 Form CO, Table 19.

115 Replies to question 19 of questionnaire Q2 to customers.

116 Call with a customer on 9 December 2021, para. 18.

117 Form CO, footnote 137.

118 Replies to question 35 of questionnaire Q2 to customers.

119 Replies to question 35.1 of questionnaire Q2 to customers.

120 Non-horizontal Merger Guidelines, paragraph 61.

121 Reply to Request for Information 5 of 20 January 2022.

122 Form CO, Table 28.

sourced exclusively from the Target suppliers would still have access to customers representing more than [90-100]% of EEA and global demand respectively.

(114) Second, the Proposed Transaction does not change Chevron's *incentives* to foreclose, as the vertical relationship between Chevron's upstream and downstream activities is pre-existing and the increment in the upstream market for Group II base oils is very small, as outlined in paragraph (107).

(115) Third, as explained in paragraph (91), the Commission considers that the role of approvals in base oils would prevent Chevron from sourcing entirely from the Target. In order to maintain its lubricants sales, Chevron will have to continue buying from third party suppliers post-transaction.

(116) Fourth, as explained in paragraph (92), experience suggests that vertical integration has no significant impact on supply structures for base oils.

(117) Finally, a vast majority of competitors replied that they expect that the Proposed Transaction will have no impact.[123]

(118) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to customers of Group II base oils post-transaction.

(C) Conclusion on input and customer foreclosure

(119) Based on the considerations above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement in relation to the vertical link between the market for Group II base oils and the markets for finished lubricants.

5.2.4. Crude oil (upstream) – Group II and Group III base oils (downstream)

5.2.4.1. The Notifying Party's view

(120) The Notifying Party claims that the merged entity has neither the ability nor the incentive for foreclosure, given the very low market share in the upstream market ([0-5]% on a global market in 2020) and low market shares in the downstream market.

(121) Although market shares on the downstream market exceed 30% under certain market definitions, no customer foreclosure concerns arise, as crude oil suppliers would maintain sufficient alternative base oil manufacturers such as SK Lubricants ([20-30]%) and Repsol ([10-20]%).[124]

(122) The Notifying Party also explains that the merged entity is unlikely to rely solely on crude oil supply from Chevron for technical reasons. In particular, base oil manufacturers generally look for specific crude oil properties to optimize their refinery operations, regardless whether produced internally or by third parties.

[123] Replies to question 35 of questionnaire Q1 to competitors.
[124] Form CO, paragraphs 234 et seq.

Therefore, integrated oil companies generally buy and sell crude oil across the commodities markets.[125]

5.2.4.2. The Commission's assessment

(A) Input foreclosure

(123) The Commission considers that Chevron post-transaction will not have the ability or incentive to engage in input foreclosure strategies for crude oil, for the reasons stated below.

(124) First, Chevron does not have the ability to foreclose access to crude oil, as this would require a significant degree of market power in the upstream market.[126] Chevron's market share in the upstream market is very low, with [0-5]% on a global market in 2020.[127] In light of its very low market share upstream, the Commission also considers that Chevron would also have no incentive to pursue an input foreclosure strategy as it is unlikely to obtain higher profits downstream to compensate the potential losses upstream from increasing prices or interrupting supply.

(125) Second, numerous strong competitors, such as Saudi Aramco ([10-20]%), Gazprom ([5-10]%) and the National Iranian Oil Co. ([5-10]%) remain active in the crude oil market post-transaction. Further competitors include CNPC ([5-10]%), Rosneft ([5-10]%), ExxonMobil ([0-5]%), BP, Shell, KPC, ADNOC, TotalEnergies (each with a share of [0-5]%), and several other large oil companies.[128] Customers still have access to these alternative suppliers, so that Chevron would not be able to foreclose access to crude oil.

(126) Finally, none of the participants in the market investigation mentioned any concerns related to input foreclosure for crude oil arising as a result of the Proposed Transaction.

(127) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to crude oil post-transaction.

(B) Customer foreclosure

(128) The Commission considers that Chevron post-transaction will also not have the ability or incentive to engage in customer foreclosure strategies, for the reasons stated below.

(129) First, Chevron does not have the ability, or incentive, to foreclose access for suppliers of crude oil to customers, as this would require a significant degree of market power in the downstream market.[129] As outlined in paragraph (60), Chevron had a market share of [30-40]% and the Target of [0-5]% in terms of volume sold in 2020, resulting in a combined market share of [30-40]% for Group II base oil sales

125 Form CO, paragraph 238.
126 Non-horizontal Merger Guidelines, paragraph 35.
127 Form CO, Table 29.
128 Form CO, Table 29.
129 Non-horizontal Merger Guidelines, paragraph 61.

in the EEA. As for Group III base oils, the Target's market share only slightly exceeds 30% (see paragraph (70)) in terms of EEA production capacity. Therefore, even in the hypothetical scenario that Chevron post-transaction stopped sourcing crude oil from third parties, these suppliers would still have access to customers representing at least [60-70]% of the demand for Group II base oil and approximately [70-80]% of the demand for Group III base oils at EEA level. At global level, competitors have access to an even larger share of the downstream market, as the Parties' market shares at global level remain below 30% for each of Group II and Group III base oils.

(130) Finally, none of the participants in the market investigation mentioned any concerns related to customer foreclosure for crude oil arising as a result of the Proposed Transaction.

(131) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to customers of crude oil post-transaction.

(C) Conclusion on input and customer foreclosure

(132) Based on the considerations above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement in relation to the vertical link between the market for crude oil and the markets for base oils.

5.3. Conglomerate effects

5.3.1. Legal framework

(133) Pursuant to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to any competition problems.[130] However, foreclosure effects may arise in conglomerate mergers when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices.[131]

(134) The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).[132]

(135) Within bundling practices, a distinction is also made between pure bundling and mixed bundling.[133] In the case of pure bundling, the products are only sold jointly in fixed proportions. With mixed bundling, the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price.[134] Tying can take place on a technical or contractual basis. For instance, technical tying occurs

[130] Non-Horizontal Merger Guidelines, paragraph 92.
[131] Non-horizontal Merger Guidelines, paragraph 93.
[132] Non-horizontal Merger Guidelines, paragraph 95 *et seq*.
[133] Non-horizontal Merger Guidelines, paragraph 95.
[134] Non-horizontal Merger Guidelines, paragraph 96.

when the tying product is designed in such a way that it only works with the tied product (and not with the alternatives offered by competitors).[135]

(136) While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices or deteriorate supply conditions in other ways.[136]

(137) In assessing the likelihood of such a scenario of conglomerate effects, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined.[137]

5.3.2. Group II and Group III base oils

(138) Chevron is active in Group II base oils and, post-transaction, in Group III base oils. Both products are in principle purchased by the same customers, namely lubricant blenders.

(139) Based on the concerns expressed by a market participant, the Commission has assessed a potential competition concern whereby Chevron would leverage its position in either Group II or Group III base oils into the other market and thereby foreclose competitors, causing harm to consumers.

(140) The Commission has assessed in particular the ability and the incentive of Chevron to engage in (i) technical tying, (ii) contractual tying/pure bundling (imposing the joint purchase of both Group II and Group III base oils) and (iii) mixed bundling (incentivising the joint purchase of both Group II and Group III base oils).

5.3.2.1. The Notifying Party's view

(141) The Notifying Party argues that its limited Group II capacity share ([10-20]% globally) speaks against any potential foreclosure effects in the event of bundled sales of Group II and Group III. In any event, several of Chevron's competitors such as Shell, SK Lubricants and Saudi Aramco can match Chevron Group II and Group III product offering following the Proposed Transaction.[138]

(142) Moreover, companies such as Saudi Aramco, ExxonMobil, SK Lubricants, Repsol, Sinopec, Petro-Canada and ADNOC already have the ability to offer both Group II and Group III and are not known to bundle their products.[139]

(143) Chevron does not expect that engaging in such practices would enable them to obtain a premium, but rather that customers would switch to alternative suppliers.[140]

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[135] Non-horizontal Merger Guidelines, paragraph 97.

[136] Non-horizontal Merger Guidelines, paragraph 92-93.

[137] Non-horizontal Merger Guidelines, paragraph 94.

[138] Form CO, paragraph 214.

[139] Form CO, paragraph 217.

5.3.2.2. The Commission's assessment

(144) The Commission considers that Chevron will not have the ability or incentive to foreclose competitors in the markets for Group II or Group III base oils by engaging in tying or bundling for the following reasons.

(145) First, Chevron does not have the *ability* to foreclose access to customers by engaging in tying or bundling of Group II and Group III base oils, as this would require a significant degree of market power in one of these markets.[141] Post-transaction, Chevron will neither have a significant degree of market power in Group II (see section 5.1.2.2) nor in Group III base oils (see section 5.1.3.2).

(146) Second, in the short to medium term, customers are bound to certain suppliers that have approvals for the respective lubricants they produce. They are therefore likely to base their choice of a bundled offer primarily on existing OEM approvals of base oils (see paragraph (18)) and not purely on price. Not all customers would therefore be willing to buy a bundle from Chevron. In consequence, foreclosure attempts via any type of bundling would be unsuccessful. The results of the market investigation support this view: only a small minority of customers indicated that they would choose a supplier who offers a discount and purchase both Group II and III base oils from them.[142] Many respondents explained that their choice would depend on a number of factors, notably including OEM approvals.[143]

(147) Third, as explained in paragraph 103 of the Non-horizontal Merger Guidelines, ability to foreclose is unlikely to exist if counterstrategies by rivals exist. Indeed, competitors could employ a counter-strategy. In the market investigation, a competitor replied that it could offer a bundle as well, whereas another competitor suggested it could lower its price.[144]

(148) Fourth, Chevron does not have the *incentive* to foreclose competitors by offering a tied or bundled product. As indicated in paragraph (146), many customers are not interested in a bundle, so Chevron would risk losing these customers. The market investigation also showed that, generally, competitors do not see bundling strategies as a profitable.[145] The current practice seems to confirm this: a majority of customers do not buy Group II and Group III base oils in a bundle and a majority of competitors do not offer such a bundle.[146]

(149) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to customers of Group II or Group III base oils post-transaction by offering Group II and Group III base oils in a bundle.

(150) Based on the considerations above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal

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140 Form CO, paragraph 222.

141 Non-horizontal Merger Guidelines, paragraph 99.

142 Replies to question 31 of questionnaire Q2 to customers.

143 Replies to question 31.1 of questionnaire Q2 to customers.

144 Replies to question 32 of questionnaire Q1 to competitors.

145 Replies to question 32 of questionnaire Q1 to competitors.

146 Replies to question 31 of questionnaire Q2 to customers and replies to question 31 of questionnaire Q1 to competitors.

market and the EEA Agreement in relation to the market for Group II and Group III for base oils.

5.3.3. Base oils and additives

(151) Chevron is active in base oils and additives. Both products are in principle purchased by the same customers, namely lubricant blenders.

(152) Based on the concerns expressed by a market participant, the Commission has assessed a potential competition concern whereby Chevron would leverage its position in either Group II or Group III base oils into the market for additives and thereby foreclose competitors, causing harm to consumers.

(153) The Commission has assessed in particular the ability and the incentive of Chevron to engage in (i) technical tying, (ii) contractual tying/pure bundling (imposing the joint purchase of base oils and additives) and (iii) mixed bundling (incentivising the joint purchase of base oils and additives).

5.3.3.1. The Notifying Party's view

(154) The Notifying Party considers that Chevron post-transaction will not have the ability to foreclose access to customers or inputs, as their market shares are modest and strong competitors remain active across the entire value chain.[147]

(155) The Notifying Party argues that it will also not have an incentive to engage in bundling, as additive suppliers typically qualify their products with multiple base oil suppliers, as end customers value the supply security this offers. If Chevron would limit its additives sales to bundles with its own base oil, end customers are likely to look for alternatives to ensure security of supply.[148] Blenders do not generally buy additives and base oils as a bundle.[149]

(156) Moreover, the Notifying Party submits that Chevron's additives business operates on an arms-length basis and with strict information firewalls between Chevron's base oils, finished lubricants and lubricant additives businesses. Therefore, Chevron cannot use any sensitive information outside of the receiving business unit for purposes of bundling/tying.[150]

5.3.3.2. The Commission's assessment

(157) The Commission considers that Chevron will not have the ability or incentive to foreclose competitors in the markets for base oils and additives by engaging in tying or bundling for the following reasons.

(158) First, Chevron does not have the *ability* to foreclose access to customers by engaging in tying or bundling of base oils and additives, as this would require a significant degree of market power in one of these markets.[151] Post-transaction, Chevron will

[147] Form CO, paragraph 223 *et seq*.
[148] Form CO, paragraph 227.
[149] Form CO, paragraph 223.
[150] Form CO, paragraph 233.
[151] Non-horizontal Merger Guidelines, paragraph 99.

neither have a significant degree of market power in Group II (see section 5.1.2) nor in Group III base oils (see section 5.1.3). Chevron's market share in additives was [10-20]% at global level in 2020, behind market leader Lubrizol with [20-30]% and Infineum with [20-30]%.[152]

(159) Second, in the short to medium term, customers are bound to certain suppliers that have approvals for the respective lubricants they produce. They are therefore likely to base their choice of a bundled offer primarily on existing OEM approvals of base oils (see paragraph (18)) and not purely on price. Not all customers would therefore be willing to buy a bundle from Chevron. In consequence, foreclosure attempts via any type of bundling would be unsuccessful. The results of the market investigation support this view: many respondents explained that their choice would depend on a number of factors, including OEM approvals.[153]

(160) Third, even if a bundle of Chevron's additives and base oils is successful on the market, customers are unlikely to source exclusively from Chevron, but to continue to multi-source from different suppliers. In the market investigation, a majority of respondents replied that they multi-source additives from more than four suppliers.[154] Some respondents suggested that even in case they decided to purchase a bundle of base oils and additives from Chevron, they would not rely exclusively on Chevron, but would continue to multi-source.[155]

(161) Fourth, as explained in paragraph 103 of the Non-horizontal Merger Guidelines, ability to foreclose is unlikely to exist if counterstrategies by rivals exist. In the market investigation, a competitor replied that it could offer a bundle as well, whereas two competitors suggested they could lower their prices.[156] Notably, the market leaders in Group II and Group III base oils, as well as in additives, remain active post-transaction. According to the Non-horizontal Merger Guidelines, competition is unlikely to deteriorate following a conglomerate concentration if there remain effective single-product players in either market.[157]

(162) Finally, Chevron does not have the *incentive* to foreclose competitors by offering a tied or bundled product. As indicated in paragraph (146), many customers are not interested in a bundle, so Chevron would risk losing these customers. The market investigation also showed that, generally, competitors do not seems to see bundling strategies as a profitable strategy.[158] The current practice seems to confirm this: a vast majority of customers do not buy base oils and additives in a bundle and none of the competitors currently offer such a bundle.[159] Chevron is already active in Group II base oils and additives, but the respective business units operate with Chinese walls, as the Parties and several market participants confirmed.[160]

152 Form CO, Table 27.
153 Replies to question 34.1 of questionnaire Q2 to customers.
154 Replies to question 21 of questionnaire Q2 to customers.
155 Replies to question 34.1 of questionnaire Q2 to customers.
156 Replies to question 34 of questionnaire Q1 to competitors.
157 Non-horizontal Merger Guidelines, paragraph 113.
158 Replies to question 34 of questionnaire Q1 to competitors.
159 Replies to question 33 of questionnaire Q2 to customers and replies to question 33 of questionnaire Q1 to competitors.
160 Form CO, footnote 137.

(163) In view of the above, the Commission considers that Chevron will likely have no ability or incentive to foreclose access to customers of base oils and additives post-transaction by offering base oils and additives in a bundle.

(164) Based on the considerations above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement in relation to the market for additives and base oils.

6. CONCLUSION

(165) 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