

***Case No COMP/M.5422 -
STATOILHYDRO / ST1 /
ST1 AVIFUELS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.5422 - STATOILHYDRO/ ST1/ ST1 AVIFUELS JV
Notification of 19.11.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 November 2008 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation n° 139/2004 ("the Merger Regulation") by which StatoilHydro ASA ("StatoilHydro", Norway) and St1 Oy ("St1", Finland) will acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, joint control over St1 Avifuels Oy ("St1 Avifuels"), a company constituting a joint venture, by way of purchase of shares.

I. THE PARTIES

2. **StatoilHydro** is a Norwegian integrated oil and gas company active in exploration and production of crude oil and natural gas, refining, retail and non-retail sales of fuels and other oil derivatives.
3. **St1** is a Finnish company mainly active in retail sales of motor fuels (gasoline, diesel and automotive LPG).
4. **St1 Avifuels**, a subsidiary of **St1**, is active in aviation refuelling at some Finnish airports.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION AND THE CONCENTRATION

5. The envisaged operation involves the purchase by StatoilHydro of 51% of shares in St1 Avifuels from St1. The remaining 49% of shares will be retained by St1. [...], St1 will hold joint control at least until [...].
6. As a result, both parties will have joint control over St1 Avifuels since both parties will enjoy veto rights on the strategic decisions of the business policy of the joint venture².
7. The present transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, given that StatoilHydro will acquire joint control, together with St1, on a pre-existing undertaking.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (EUR 66 338 million). Each of them have a Community-wide turnover in excess of EUR 250 million (StatoilHydro: EUR [...] million, St1: [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

RELEVANT MARKETS

Relevant product markets

9. The proposed concentration involves the market for jet fuel supply. In previous decisions, the Commission has considered that aviation jet fuel has to be distinguished from the other motor fuels⁴. A further distinction should also be made between **ex refinery jet fuel sales** and **into plane or retail sales**.

Ex refinery jet fuel sales

10. According to previous Commission decisions⁵, **ex-refinery sales** consist of sales made in large lots on a spot basis by refiners to other oil companies, traders, resellers or large industrial customers. Ex-refinery supply of jet fuel therefore comprises supply of jet fuel to the into-plane suppliers.

2 The strategic matters for which the unanimous decisions of the Board of Directors is required, are: [...].

3 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

4 E.g. Case No. IV/M.1383 - Exxon/Mobil.

5 Case COMP/M.1628-Totalfina/ELF; COMP/M.3110-OMV/BP, COMP/M.5005-Galp Energia/Exxonmobil Iberia

Into-plane services

11. **Retail or into plane supply** (or "fuelling services") comprises supply of jet fuel at the airport under contract with the airlines, and arrangements with servicing companies that operate the airport fuelling infrastructure (storage, hydrants, pipelines) and perform the actual into plane fuelling services with tank trucks to the plane for a fee paid by the suppliers⁶.

Relevant geographic markets

Ex refinery jet fuel sales

12. Previous Commission decisions defined the relevant geographical market for **ex-refinery sales** as the EU or Western Europe⁷. However, in *Preem/Scandinaviska Raffinaderi*, the Commission considered this market as being *at least* Scandinavian (Denmark, Finland, Norway and Sweden), without closing the geographic market definition⁸.
13. The parties argue that this decision does not support the idea of a market confined to the four Nordic countries but, instead, points to a possible wider market. They base their argument on an assumption that jet fuel, just like any other refined product, may always be carried by sea from any part of the world, although they recognise that it would be impractical to carry fuels over extremely long distances. In addition, the parties have submitted that the Western European market is usually divided between the Mediterranean and North West-Europe, and in the light of the above, they consider that the relevant geographic market for ex-refinery sales of jet fuel should be seen as covering – at least – North West Europe.
14. As will be further explained below, it is however not necessary to define the exact geographic scope of the market as the envisaged operation does not raise any competition concerns under any possible market definition.

Into-plane services

15. The parties consider, in line with previous Commission decisions, that the geographic market for **into-plane services** is limited to a specific airport, due to the airport-specific supply contracts and fuelling infrastructure specific to each airport⁹.
16. Thus, airlines which are the primary jet fuel customers, select the most attractive bidder for their purchases on an airport-specific basis depending on the relative strengths and

⁶ COMP/M.3110-OMV/BP, COMP/M.5005-Energia/Exxonmobil Iberia

⁷ Case IV/M.727 – BP/Mobil, paragraph 34: according to this decision, refined products are traded ex-refinery in Western Europe at competitive prices which are freely available. The relatively small price differences in product prices between different regions in Europe are mainly due to the cost of shipping. See also, COMP/M.2681 – Conoco/Phillips, paragraph 12, and COMP/M.4926 – Basell / Berre L'étang Refinery.

⁸ Case COMP/M.3291- Preem / Skandinaviska Raffinaderim paragraph 14

⁹ COMP/M.1383 – Exxon/Mobil; COMP/M.1628 – TotalFina/Elf; M.3110-OMV/BP, COMP/M.5005-Energia/Exxonmobil Iberia.

advantages of suppliers at a given location¹⁰, based not only on the differential prices, but also on distribution services etc.

17. However, for the purpose of this case it is not necessary to finally decide on the geographic scope of the market, since on all alternative markets the transaction does not raise competition concerns.

V. COMPETITIVE ASSESSMENT

18. According to the above market definitions, the envisaged transaction involves the markets for (i) ex-refinery sales of jet fuels and (ii) into-plane services where the parties' activity might overlap vertically.
19. As, only StatoilHydro is active in the market for ex-refinery sales of jet fuels, therefore there are no horizontal overlaps as result of the operation.
20. However, there is a potential vertical relationship between StatoilHydro and St1 Avifuels.
21. On the upstream market for ex-refinery sales of jet fuels, StatoilHydro has a market share well below 25% under every geographic market definition¹¹, while on the downstream market for into-plane service St1 Avifuels has a market share of around [20-30]% at the Helsinki airport and 100% at Tampere, Vaasa and Pori airports.
22. StatoilHydro faces competitive pressure from strong competitors such as BP, Shell, TotalFinaElf, Kuwait Petroleum, Exxon and Chevron within the Nordic region. Moreover, it does not sell either directly or indirectly any jet fuel in Finland where the only supplier is Neste Oil Oy which in turn provides jet fuel to North European Oil Trade Oy ("NEOT").¹²
23. It follows from the foregoing that a vertical relationship with St1 Avifuels would be unlikely in the coming years, since the shareholder agreement concluded between StatoilHydro and St1 designate NEOT as the sole St1 Avifuels' supplier [...].
24. With respect to the market for into-plane services there is also no horizontal overlap as StatoilHydro and St1 Avifuels operate in different geographic markets.
25. Furthermore according to information provided in the form CO both StatoilHydro and St1 are active on the market for retail supply of motor fuels (gasoline, diesel and automotive LPG) in Sweden. However, this market is not affected by this operation as St1 Avifuels does not operate on it. In addition, although StatoilHydro is the first player

¹⁰ COMP/M.1383 – Exxon/Mobil and COMP/M.1628 – TotalFina/Elf.

¹¹ StatoilHydro in its last submission estimates its market share to [0-5]% in North-Western Europe and [5-10]% in the four Nordic countries. It does not operate in Finland.

¹² Neste supplies Jet fuel from Porvoo to Neste Marketing Oy, Oy Shell Ab and North European Oil Trade Oy ("NEOT"). NEOT is a fuel procurement company jointly owned by Suomen Osuuskauppojen Keskuskunta ("SOK") and St1. SOK holds 66 % and St1 34 % of shares in NEOT. NEOT is active in the wholesale supply of fuel; it is the sole supplier of jet fuel to St1 Avifuels. St1 acquired its shareholding in NEOT from SOK in 2003, when NEOT had just been founded.

in this market¹³, due to the very limited market presence of St1¹⁴ in Sweden, the risk of anticompetitive coordinated effects between the parties' activities is very unlikely.

26. It can be concluded from the above that the proposed concentration does not raise competition concerns on the markets for (i) ex-refinery sales of jet fuels and (ii) into-plane services.

VI. CONCLUSION

27. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(*signed*)
Vladimir SPIDLA
Member of the Commission

¹³ StatoilHydro has a market share in Sweden of [40-50]% and despite its commitment to divest a part of its networks consisting of 158 unmanned stations, its final market share would amount to [30-40]% ([5-10]% less than before the divesture), see case COMP/M.4919 - StatoilHydro / ConocoPhillips.

¹⁴ St1 operates only 43 stations out of about 4000 stations in Sweden.