

Completed acquisition by Shell UK Limited of 253 petrol stations from Consortium Rontec Investments LLP

ME/5191/11

The OFT's decision on reference under section 22 was given on 3 February 2012. The full text of that decision was published 13 February 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Shell UK Limited (Shell)** is a wholly owned subsidiary of the Royal Dutch Shell Group. The Group is active in the worldwide exploration, production and sale of oil and natural gas, the production and sale of oil products and chemicals, power generation and the production of energy from renewable sources. The Group's downstream business is active in the refining of crude oil into a range of refined products that are marketed around the world for domestic, industrial and transport use. Marketing activities include the retail of motor fuels and related products.
2. **Rontec Investments LLP (Rontec)** is a special purpose joint venture partnership between GMR Capital Limited (GMR), Investec plc (Investec), Grovepoint Capital LLP and others, set up to acquire the retail fuel network of Total in the UK, Isle of Man and Channel Islands made up of 810 Total branded sites.
3. **The Target Business** comprises 253 petrol stations; 241 previously owned and operated by Total which were acquired by Rontec Investments and sold on to Shell, nine previously owned by Total but operated by dealers, and the rights to supply three which are dealer owned and operated. The UK turnover of the target business in 2010 was approximately £[] million.

TRANSACTION

4. Shell acquired the target business from Rontec for approximately £252.4 million. The transaction completed on 1 November 2011 and Shell provided Initial Undertakings to the OFT pursuant to section 71 of the Enterprise Act 2002 (the Act) on 2 November 2011 for the purpose of preventing pre-emptive action.

JURISDICTION

5. The transaction qualified for investigation under the EC Merger Regulation.¹ Shell made a request under Article 4(4) of the EC Merger Regulation for the transaction to be referred in whole to the United Kingdom. The Office of Fair Trading (OFT) informed the European Commission (the Commission) on 20 July 2011 that it agreed with the referral request. The Commission referred the transaction for investigation to the OFT on 1 August 2011.² The statutory deadline for a decision, as extended, was 3 February 2012.
6. The OFT believes that as a result of this transaction Shell and the target business have ceased to be distinct. The annual UK turnover associated with the target business exceeds £70 million so the turnover test in section 23(1)(b) of the Act is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

BACKGROUND

7. In its decision of 3 February 2012 on the completed acquisition, the OFT stated that it believed that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom. Specifically, in respect of the retail of fuel in respect of six local areas of overlap around, TCS Brenzett, TCS Demon, TCS Stoughton, TCS Ewood, TCS Ickenham and TCS Great Barr; and in respect of respect of six local areas of overlap around auto-LPG Target Businesses, TCS Stopsley, TCS Fleet, TCS Addlestone, TCS Ducklington, TCS Broughton and TCS Grovebury.

¹ Council Regulation (EC) No. 139/2004

² COMP/M.6294 - Shell/Rontec Investments LLP – 01/08/11

8. In respect of the retail fuel SLC overlaps, having considered a variety of evidence including estimates of upward pricing pressure, diversion ratios, marker sites, business models and reviewed maps, the OFT noted that the parties mark each other's sites and that there are high levels of diversion from Shell's sites to the Target Businesses sites and/or vice versa.
9. In respect of the auto-LPG SLC overlaps the OFT noted that in each case the parties either mark each other's sites or are the closest geographically. In addition, although survey responses were limited, there are high levels of diversion from Shell's sites to the Target Businesses sites and vice versa.
10. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission (CC).

DIVESTMENT UNDERTAKINGS OFFERED BY SHELL

11. To address the OFT's concerns in respect to the retail fuel SLC areas, Shell offered to divest to a suitable purchaser either the Target Business site or one or more of the Shell sites. In respect of the auto-LPG SLC areas, Shell offered to divest its auto-LPG interest in relation to the relevant Target Business LPG Site for every SLC overlap area thereby remedying the competition concerns arising from the merger.
12. Each of the auto-LPG divestment sites is part of a Target retail fuel site and therefore there will be an ongoing link between Shell and the divested LPG business. However, the undertakings in lieu specifically take this into account, by giving the acquirer access to the site and sole responsibility for setting auto-LPG prices at these sites. Shell retains the responsibility for health and safety at the auto-LPG divestment sites.
13. The OFT stated in its Decision that the proposed undertakings are a structural remedy that will, in these local areas, remove the overlap between the parties. The OFT therefore considered that Shell's proposed UILs were capable to act as a clear-cut and comprehensive remedy to address the competition concerns identified.
14. For the reasons given in the Decision, the OFT considered that, in the circumstances of this case, it was appropriate and proportionate to require that the SLC auto-LPG sites be divested to an upfront buyer, given the relatively

fewer potential purchasers. As described in the consultation document, the approved upfront buyer of the auto-LPG assets is Flogas UK Limited (Flogas).

15. In respect of the retail fuel remedy, the OFT, for the reasons specified in its Decision, considered that it was not necessary to include an up-front buyer provision in this case.
16. On 3 February 2012, the OFT therefore announced that it was suspending its duty to refer the acquisition to the CC under section 22 of the Act because the OFT was considering whether to accept appropriate undertakings from Shell in lieu of reference.

CONSULTATION

17. On 18 June 2012 the OFT published the proposed undertakings in lieu of reference, inviting interested parties to give their views on them by 9 July 2012 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published on the OFT's website alongside the proposed undertakings in lieu is set out in the Annex to this decision.
18. The OFT received no comments from interested parties during the consultation period.

DECISION

19. The Decision concluded that the merger would be referred to the CC if the parties failed to give suitable undertakings pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
20. The OFT considers that the undertakings provided by Shell are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by Shell, including Flogas as the buyer for the auto-LPG divestment sites.
21. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Shell, will come into effect from this date (12 July 2012).

COMPLETED ACQUISITION BY SHELL UK LIMITED OF 253 PETROL STATIONS FROM CONSORTIUM RONTEC INVESTMENTS LLP

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 3 February 2012, the OFT announced its decision to suspend its duty to refer the completed acquisition by Shell UK Limited (Shell) of 253 petrol stations from Consortium Rontec Investments LLP (Rontec)(the Transaction) under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept undertakings from Shell in lieu of a reference to the Competition Commission.

The OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition (SLC) within a market or markets in the United Kingdom, as a result of the Transaction. The OFT found specific concerns in relation to the supply of retail fuel at six sites and the retail supply of auto-LPG at a further six sites. The OFT is therefore under a duty to refer the merger to the Competition Commission. The detailed reasons for the OFT's findings can be found in its decision which was published on 13 February 2012 (the Decision).

Divestment undertakings offered by Shell in respect of auto-LPG

In order to remedy the SLC identified in the Decision, Shell offered to divest, to an upfront buyer, its auto-LPG interest in relation to the relevant Target Business LPG Sites listed in annex one to the Undertakings.

Up-front buyer for the six auto-LPG sites and associated assets

In line with its Mergers - Exceptions to the duty to refer and undertakings in lieu of reference guidance,³ the OFT considered that it was reasonable and proportionate in this case to impose an upfront buyer requirement (UFB).⁴

In order to meet the UFB Requirement, Shell has proposed, Flogas UK Limited (Flogas) as an appropriate acquirer of the auto-LPG assets. The OFT has therefore referred specifically to Flogas in the undertakings in lieu, on which the OFT is consulting. The OFT also notes that Shell has entered into a Sale, Purchase and Operating Agreement in relation to the LPG Trading Facilities at the six auto LPG divestment sites to transfer the business to Flogas and that this agreement is conditional only upon OFT acceptance of the undertakings in lieu and completion of the transaction between Shell and Flogas in respect of the Target Business LPG Sites.

Suitability of the proposed purchaser

The OFT sets out below the reasons it considers the proposed purchaser as suitable to acquire the auto-LPG assets. In approving a purchaser, the OFT's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. As such, the proposed purchaser must not raise prima facie competition concerns.⁵

The proposed purchaser, Flogas, is ultimately owned by DCC plc, who also own a number of other energy companies such as the nationwide oil distributor GB Oils Limited.

Flogas is a national supplier of Liquefied Petroleum Gas (LPG) and supplies a wide range of customers, including petrol stations, across Great Britain. Flogas supplied auto-LPG through a 50/50 joint venture with Total⁶ to the six auto-LPG divestment sites; Flogas is therefore acquiring, by way of a 15-year lease, the 50 per cent interest in the LPG assets at the six auto-LPG divestment sites that it does not currently hold. The transaction is therefore not expected to raise competition concerns in the supply of auto-LPG in these local areas. Flogas has no trading

³ OFT 1122 www.oft.gov.uk/shared_of/mergers/Consultations/oft1122.pdf

⁴ See paragraphs 5.31 to 5.37 of Mergers - Exceptions to the duty to refer and undertakings in lieu of reference guidance.

⁵ See paragraph 5.26 of Mergers - Exceptions to the duty to refer and undertakings in lieu of reference guidance.

⁶ the original operator of the six sites

relationship with Shell, is completely independent and has the necessary expertise, resources, incentives and intention to operate the six auto-LPG divestment sites as an effective competitor in the marketplace. The OFT therefore considers Flogas to be a credible acquirer of the divestments.

Divestment undertakings offered by Shell in respect of Local retail fuel

To address the OFT's competition concerns with regard to the local retail fuel overlaps (Local Retail Fuel SLC), Shell offered to divest to a suitable purchaser either the Target Business site or one or more of the Shell sites listed in annex two of the undertakings thereby effectively removing the substantial lessening of competition created by the merger in those areas.

Shell will be required to divest the sites by the end of the Divestment Period following acceptance of undertakings by the OFT.

Suitability of the proposed purchasers

The OFT has adopted the criteria detailed in paragraph 4.1 of the attached draft undertakings for purchaser approval. In approving a purchaser, the OFT's starting position is that it must be confident without carrying out a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. As such, the proposed purchaser must not raise prima facie competition concerns. Since the Local Retail Fuel SLC divestments are not subject to an UFB, Shell has until the end of the Divestment Period to identify proposed purchasers, for the OFT to conclude on their suitability as a proposed purchaser.

OFT minded to accept undertakings in lieu in form proposed

The OFT considers that the proposed undertakings offered by Shell, including Flogas as a purchaser for the six auto-LPG businesses, are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

- Download the [proposed undertakings in lieu](#) (pdf 203kb).

Public consultation: invitation to comment

The OFT has a duty to consult the public in relation to proposed undertakings in lieu of a reference to the Competition Commission before taking any final decision. It therefore invites comments and representations from third parties in relation to the overall divestment package including the form of the proposed undertakings and the proposed identified purchaser for the auto-LPG assets.

Representations should be made in writing to:

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Deadline for comments: 9 July 2012