EUROPEAN COMMISSION

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C(2019) 1977 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Subject: **Case M.9175 – TOTAL / CHEVRON DENMARK**
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 1 February 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Total Holdings USA. Inc. ("Total", of the United States of America) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Chevron Denmark Inc. ("Chevron Denmark", of the United States of America), by way of purchase of shares (the "Transaction").[3] Total is designated hereinafter as the "Notifying Party". Total and Chevron Denmark are referred to together 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 53, 11.2.2019, p. 4.

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1. THE PARTIES

(2) Total is an international integrated energy producer engaged in every sector of the oil and gas industry world-wide, including upstream (hydrocarbon exploration, development and production) and downstream (refining, petrochemicals, specialty chemicals, trading and shipping of crude oil and petroleum products and marketing).

(3) Chevron Denmark is an oil and gas company owned by the Chevron group. Chevron Denmark is active in the exploration, production and supply of crude oil and natural gas originating from the Danish North Sea.

2. THE OPERATION

(4) Pursuant to a Share Sale and Purchase Agreement of 23 September 2018, executed between Total and Chevron Denmark's sole shareholder, Chevron Global Energy Inc. (a company registered in Delaware in the United States and fully owned company of the Chevron group), Total will acquire the entire share capital of Chevron Denmark Inc.

(5) Post transaction Total will be the sole shareholder in Chevron Denmark and will therefore be able to solely exercise decisive influence over Chevron Denmark's strategic decisions.

3. THE CONCENTRATION

(6) The Operation therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million.[4] Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

5. MARKET DEFINITION

5.1. Activities of the Parties in relation to crude oil and natural gas fields in the Danish North Sea

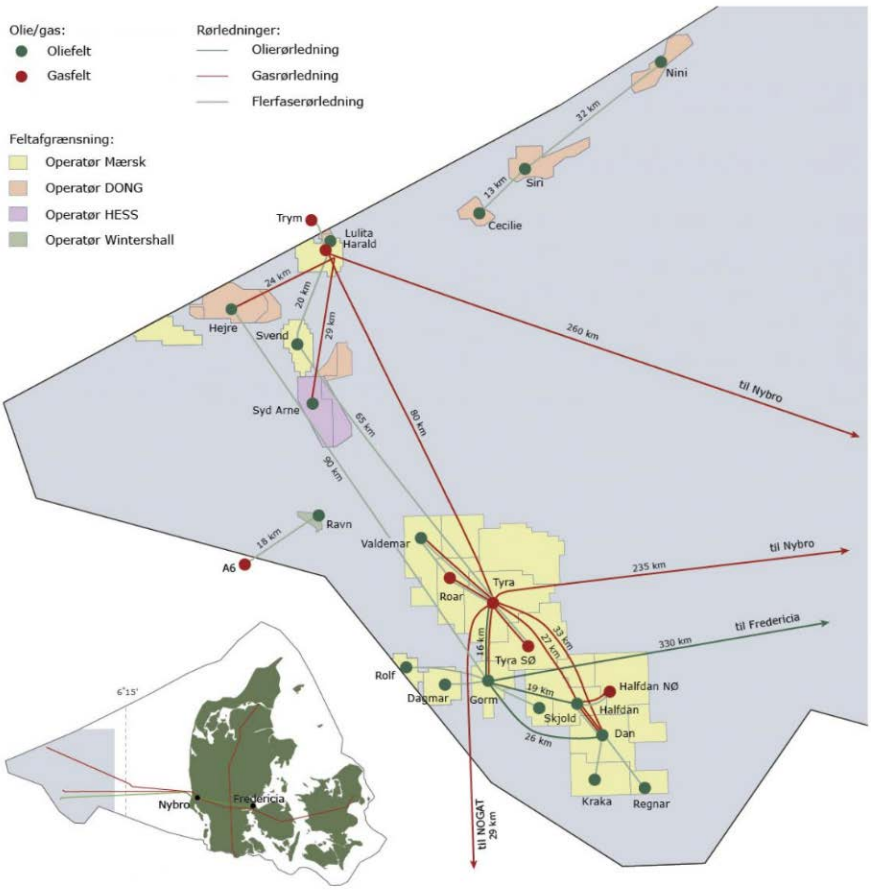
(8) Total, together with its subsidiaries, is an international integrated energy producer, with operations in more than 130 countries, including in Denmark.

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

(9) Chevron Denmark's activities entirely consist in its interests in the DUC, the *Licence 8/06 Area B* exploration licence and the Tyra pipeline in Denmark (see paragraphs (12) - (15)). Chevron Denmark's production volumes are mainly sold in Denmark, through the Chevron group trading entity Chevron Products UK Limited ("CPUK").

(10) The Parties are therefore both active in exploration of crude oil and natural gas in Denmark. The Parties are also both active in the upstream wholesale supply of crude oil, and in the upstream and downstream wholesale supply of natural gas in Denmark, as well as in offshore transportation of crude oil and natural gas by pipeline and processing of crude oil and natural gas in Denmark.

(11) Since the Parties' activities mainly overlap in Denmark, the primary focus of the competitive assessment in this Decision is Denmark.



Crude oil and natural gas fields in the Danish North Sea. Source: Danish Energy Agency

(12) In more detail, the Parties are partners of the *Dansk Undergrounds Consortium* ("DUC"), a consortium between Shell (36.8%), Total (31.2%), Chevron Denmark (12%) and the North Sea Fund (20%).[5] The DUC was established in 1962 in order to exploit a concession ("the Sole Concession") with a term until 2042 for exploration and production of oil and gas from 15 fields in the Danish Continental Shelf. Total operates DUC on behalf of all the consortium members. All the Parties' activities in Denmark are done through or related to DUC. [Starting date of the new contractual obligations], [most]% of the gas produced by the Parties through the DUC has to be sold to Ørsted, a publicly listed energy company owned at 50% by the Danish State. The remaining [part]% of the DUC gas production can be sold individually by each member of the DUC consortium onto the market.

(13) In addition to producing gas, the Parties, through DUC, also produce […] crude oil. In Denmark, the Parties' activity is limited to the production they obtain from their interest in the DUC assets. The DUC has fifteen producing oil fields that are connected to four processing hubs. The oil is transported to land by pipeline (see paragraph (15)) and processed before being sold.

(14) The Parties are also partners in one small exploration licence block, the *Licence 8/06 Area B*, together with Shell and the North Sea Fund. There is neither production nor facilities on this licence area so far, and the licence is set to expire on 31 December 2019, unless extended.

(15) There are several gas pipelines in the Danish North Sea that may transport gas from the DUC to shore. One of them is the Tyra West – F3 connection pipeline ("Tyra pipeline"), owned by DUC, operated by Total and used by the DUC partners. DUC also owns interconnection gas and oil pipelines between fields and processing hubs, operated by Total and used by the DUC partners and third parties. In order to transport their crude oil produced from the Danish North Sea to Denmark the Parties use a 330 km 20" pipeline called the Danish Oil Pipe, which is fully owned and operated by Ørsted.

5.2. Background information on the Danish gas market

(16) Energinet's[6] business model for the Danish gas transmission system is based on an entry-exit model, which allows market players to commercially move gas in and out of Denmark. The Danish business model provides the following entry points: three entry points at Nybro, Ellund and Dragør, where the natural gas could enter Denmark from the North Sea, Germany and Sweden respectively (Dragør is a potential entry point which currently works as an exit point[7]); and one entry point (BNG Entry) for biomethane (bio natural gas). The exit points are the following: Exit zone Denmark, which makes it possible for gas suppliers to

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5 The North Sea Fund is a state-owned oil and gas company managing the Danish State participations in the oil and gas sector since 2005.

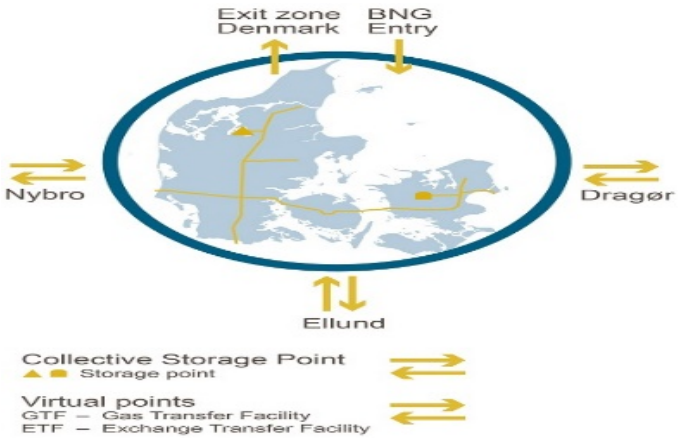
6 Energinet is the owner and operator of the transmission systems for electricity and natural gas in Denmark.

7 Sweden has almost no natural gas production (Sweden has some production of biogas only). Denmark is the only source of supply to Sweden and all transport of natural gas to Sweden goes through the Dragør border point (Form CO, paragraphs 192, 193).

deliver gas to all Danish consumers through the gas distribution network; and three transit exit points at Nybro, Ellund and Dragør for the export of natural gas.

(17) The Danish gas market model offers shippers two ways to buy and sell gas: through the ETF (Exchange Transfer Facility) or through the GTF (Gas Transfer Facility). On ETF (the Danish hub) producers / importers sell gas to wholesalers under standard contracts for standard volumes through an exchange platform, while wholesalers buy and resell gas. In addition, producers may also carry out some trading without deliveries. GTF on the other hand is the virtual point for bilateral over-the-counter (OTC) trades with the possibility to use non-standard contracts.

(18) This entry and market organisation is described by Energinet on its website:[8]



5.3. Exploration of crude oil and natural gas

(19) The Commission has considered in its decisional practice that no distinction is to be made, in terms of the relevant product market, between the exploration for crude oil on the one hand and exploration for natural gas on the other, as the contents of underground reservoirs cannot be known at the stage of exploration.[9] The Commission has considered this market to be world-wide in scope, given that the companies engaged in exploration do not tend to limit their activities to a particular geographic area.[10] The Notifying Party does not dispute this market definition.

(20) In any event, the Commission considers that the exact delineation of the relevant market in this case may be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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8 See https://en.energinet.dk/Gas/Gas-Market#Model.

9 Commission decision of 3 December 2013 in Case M.6910 – *Gazprom / Wintershall / Target Companies*, paragraph 46; Commission decision of 21 August 2009 in Case M.5585 – *Centrica / Venture Production*, paragraph 8.

10 Commission decision of 3 December 2013 in Case M.6910 – *Gazprom / Wintershall / Target Companies*, paragraph 47.

5.4. Upstream wholesale supply of crude oil

(21) In its previous decisional practice, the Commission has defined the upstream wholesale supply of crude oil as a separate market from the upstream wholesale supply of natural gas as gas and crude oil have different applications and are subject to varying pricing behaviour as well as cost restraints.[11] The Commission has generally considered the market for the upstream wholesale supply of crude oil to be world-wide in scope.[12] For some specific "difficult to reach" customers, such as refineries in certain land-locked EEA countries, the Commission has considered that the geographic scope could be limited to a specific supply pipeline, such as the Druzhba pipeline.[13] The Notifying Party submits that the market for upstream wholesale supply of crude oil is world-wide in scope.

(22) In any event, the Commission considers that the exact delineation of the relevant market in this case may be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.5. Upstream wholesale supply of natural gas

(23) The Commission has found in its decisional practice that there is one relevant product market for the upstream wholesale sale of natural gas[14], which is separate from the relevant market for the upstream wholesale sale of crude oil.[15] On the market for the upstream wholesale supply of natural gas, upstream producers tend to sell large volumes of gas to downstream wholesalers, mostly under long-term gas supply agreements.

(24) In its previous decisional practice, the Commission also considered whether the upstream wholesale supply of natural gas should be divided into two distinct markets, one for liquefied natural gas ("LNG") and one for piped gas.[16] However, such a distinction is not relevant in the present case, since there are no LNG activities in Denmark.

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11 Commission decision of 10 September 2014 in Case M.7316 – *Det Norske Oljeselskap / Marathon Oil Norge*, paragraph 6; Commission decision of 8 March 2013 in Case M.6801 – *Rosneft / TNK-BP*, paragraph 12; Commission decision of 6 March 2002 in Case M.2681 – *Conoco / Philipps Petroleum*, paragraph 10.

12 Commission decision of 3 September 2014 in Case M.7318 – *Rosneft / Morgan Stanley Global Oil Merchanting Unit*, paragraph 11; Commission decision of 11 December 2009 in Case M.5629 – *Normeston / MOL / MET JV*, paragraph 13.

13 Commission decision of 8 March 2013 in Case M.6801 – *Rosneft / TNK-BP*, paragraph 19.

14 Commission decision of 21 August 2009 in Case M.5585 – *Centrica / Venture Production*, paragraph 10.

15 Commission decision of 29 September 1999 in Case M.1532 – *BP Amoco/Arco*, paragraph 14.

16 Commission decision of 2 September 2015 in Case M.7631 – *Royal Dutch Shell/BG Group*, paragraph 30; Commission decision of 11 April 2018 in Case M.8771 – *Total/Engie (Part of Liquefied Natural Gas Business)*, paragraph 13.

(25) The Commission has also in some cases distinguished between high-calorific gas (H-gas) and low-calorific gas (L-gas) at each level of the gas supply chain.[17] However, that distinction is not relevant for the assessment of this case since there is no L-gas in Denmark.

(26) In its decisional practice so far, the Commission has not yet taken a definitive view regarding the geographic scope of the upstream wholesale supply of natural gas. Although the Commission has considered that from a demand side perspective the market could potentially be considered to include the EEA, Algeria and Russia,[18] from the supply side perspective, depending on the level of the supply chain (import/wholesale, sale to industrial customers and electricity generators, sale to household customers) that the supply takes place, or due to limited interconnection infrastructure or lack of available cross-border capacity, the Commission considered in some cases the geographic market to be narrower (i.e., regional, covering several Member States, or even national).[19]

(27) The Notifying Party submits that the scope of the geographic market in this case covers the EEA, i.e. it includes gas produced in the EEA as well as Algerian, Russian and Libyan gas imports into the EEA. However, the Notifying Party submits that […], if the market is narrower than the EEA, it should comprise at least Denmark, Sweden, Germany and the Netherlands.

(28) In more detail, as regards Sweden, the Notifying Party submits that it belongs to the same market as Denmark since Sweden has quasi no gas production and the Swedish gas market is supplied with gas from Denmark only.

(29) The Notifying Party further submits that, in addition to Sweden, the geographic scope of the market should also cover at least Germany and the Netherlands. This is because Denmark exports gas to Sweden, Germany and the Netherlands, and recent investments in Ellund have made it possible to export/import gas to/from Germany with a low risk of congestion.[20] At certain times of the year (e.g. in winter), Denmark actually imports gas from Germany through the Ellund border point. In this respect, during the shutdown period of Tyra (November 2019 until approximately the summer of 2022), all gas for the Danish (and Swedish) market will have to be imported from Germany via entry/exit point Ellund.

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17 Commission decision of 24 January 2019 in Case M.8773 – *LetterOne/BASF/Wintershall DEA*; Commission decision of 14 November 2006 in Case M.4180 – *Gaz de France / Suez*; Commission decision of 23 June 2009 in Case M.5467 – *RWE / Essent*; Commission decision of 17 June 2010 in Case M.5802 – *RWE ENERGY/ MITGAS*; Commission decision of 3 December 2009 in Case 39.316 – *Gaz de France*; and Commission decision of 4 May 2010 in Case 39.317 – *E.ON Gas*.

18 Commission decision of 29 September 1999 in Case M.1383 – *Exxon / Mobil*, paragraph 18; Commission decision of 29 September 1999 in Case M.1532 – *BP-Amoco / Arco*, paragraphs 16-17. In both decisions the Commission pointed out however, that due to purchasing policies as to the origin of the gas based on security of supply, certain legislations impose limits on the amount of gas that comes from the same country.

19 Commission decision of 8 March 2013 in Case M.6801 – *Rosneft / TNK-BP*, paragraph 12; Commission decision of 3 May 2007 in Case M.4545 – *Statoil / Hydro*, paragraphs 13-16.

20 http://ec.europa.eu/energy/eepr/projects/files/gas-interconnections-and-reverse-flow/baltic-denmark_en.pdf.

(30) Moreover, the Baltic Pipe project[21] will allow transport of gas from Norway to the Danish and Polish markets, as well as from Poland to the Danish and Swedish markets. The Notifying Party submits that this will further integrate Norway into the Danish upstream wholesale supply of gas segment, as the Baltic Pipe will create a link between the Europipe II, which connects Norway (Kårstø processing plant) to onshore Germany (Dornum), and onshore Denmark (Varde).

(31) During the market investigation, some competitors indicated that they supply gas at the wholesale level throughout Europe.[22] Moreover, they indicated that historically there has been a strong correlation between Danish domestic and neighbouring countries' natural gas prices, suggesting that the geographic market may be wider than national.[23]

(32) The Commission considers, in any event, that the exact delineation of the relevant market in this case may be left open (including whether the product market should be further segmented, and whether the geographic scope of the market is national, regional or EEA-wide), as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.6. Downstream wholesale supply of natural gas

(33) In previous decisions, the Commission defined a distinct product market for the downstream wholesale supply of gas, as comprising the activity whereby wholesalers procure gas from producers for resale to other wholesalers or downstream distributors.[24]

(34) In some previous decisions, the Commission has considered possible subdivisions. In particular, the Commission has considered whether sales on exchanges are in the same market as bilateral sales.[25]

(35) In that regard, the Notifying Party submits that the downstream wholesale market in Denmark should include the sales on both the ETF and the GTF, for the following reasons. First, the ETF and GTF share the same balancing zone.[26] In general, a market corresponds to one balancing zone and one Transmission System Operator ("TSO"). Second, market participants can easily switch between ETF and GTF, as there are no constraints when purchasing on either GTF or ETF.

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21 For more information on this project: https://www.baltic-pipe.eu/.

22 See responses to question 13 of the Commission's questionnaire to suppliers.

23 See responses to question 12.2 of the Commission's questionnaire to suppliers.

24 Commission decision of 19 November 2013 in Case M.6984 – *EPH/Stredoslovenska Energetika*, paragraph 21; Commission decision of 29 September 2010 in Case 39.315 – *ENI*, paragraph 25.

25 Commission decision of 22 December 2008 in Case M.5224 – *EdF/ British Energy*.

26 A balancing zone is an entry-exit system for which a specific balancing regime (rules and agreements that apply to portfolio and TSO balancing) is applicable. Gas suppliers are required to maintain an equilibrium on a balancing zone between the gas they put into the system and the gas they or their customers withdraw.

Third, market participants trade on the GTF more customized contracts or longer-term maturities, while on the ETF market participants usually trade on a with-in day, day-ahead or month-ahead basis. However, although liquidity on ETF is limited especially for longer term products, gas traded on ETF could still be traded on a long-term basis as it could be on GTF. Fourth, prices on GTF are not public, but it is understood by the market that they are correlated to those of ETF.

(36) The market investigation carried out by the Commission provided some indications that ETF and GTF could belong to the same relevant product market. Respondents to the market investigation stated that sales on the ETF and GTF are substitutable in terms of access to, prices and types of contracts.[27] It appears that there are no access restrictions as regards both ETF and GTF, and market participants can use them interchangeably. It also appears that price data is transparent and prices are similar on both ETF and GTF.

(37) As regards the geographic scope of the market, the Commission defined it as national in scope in previous decisions.[28] In some cases, the Commission has however included gas hubs located abroad in the same relevant wholesale market.[29] In other instances, the Commission has also defined sales on a separate hub as a distinct market.[30]

(38) The Notifying Party argues that the downstream wholesale market should be considered wider than Denmark and it should include other European wholesale markets and hubs such as the National Balancing Point ("NBP", United Kingdom), the Title Transfer Facility ("TTF", Netherlands), NetConnect Germany ("NCG", Germany), and Gaspool (Germany). The Notifying Party submits that for example, gas produced in Denmark could be delivered to hubs in Denmark, the Netherlands or Germany. In addition, companies trading on ETF can generally easily switch to another hub in the EEA. First, prices on different EEA hubs such as TTF, Gaspool and NCG, are closely correlated. Second, a virtual transaction on ETF can also be executed on the hubs in the Netherlands or Germany (or any other EEA Member State's hub). Third, the main traded contracts that exist on ETF similarly are also available on Dutch and German hubs.

(39) The market investigation carried out by the Commission provided indications that the market could be broader than national, and could possibly also include neighbouring European hubs such as TTF, Gaspool and NCG. Respondents to the market investigating explained that they sell or purchase gas not only on ETF but also on other European hubs such as TTF, Gaspool and NCG.[31] It appears that access, prices, and types of contracts available for use on ETF and other European

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27 See responses to question 8 of the Commission's questionnaire to suppliers.

28 Commission decision of 17 June 2010 in Case M.5802 – *RWE ENERGY/ MITGAS*, paragraph 19.

29 Commission decision of 10 March 2017 in Case M.7936 – *Petrol / Geoplin*, paragraph 24; Commission decision of 23 June 2009 in Case M.5467 – *RWE / Essent*.

30 Commission decision of 14 November 2006 in Case M.4180 – *Gaz de France / Suez*, paragraph 72.

31 See responses to question 16 of the Commission's questionnaire to suppliers and to customers.

hubs such as Gaspool and NCG, and in some instances TTF, are similar.[32] Therefore, it appears that the geographic market could be broader than national.

(40) In any event, the Commission considers that the exact delineation of the relevant market in this case may be left open, including whether sales on ETF and GTF belong to the same product market or not, and whether the geographic market is national or possibly wider including other European hubs, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.7. Offshore transportation of crude oil and natural gas by pipeline

(41) The Commission has previously considered that separate relevant product markets could exist for the offshore transportation of (i) crude oil by pipeline,[33] and (ii) natural gas by pipeline.[34] The geographic scope of these two markets was considered to be limited to the respective North North Sea ("NNS") – north of latitude 55°, South North Sea ("SNS") and Norway regions.

(42) The Notifying Party submits that the geographic market corresponds to the Danish North Sea, since the pipelines transporting crude oil and natural gas produced from the Danish North Sea to processing terminals or shore terminals are not interchangeable with other pipelines.

(43) In any event, the Commission considers that the exact delineation of the relevant market in this case may be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

5.8. Processing of crude oil and natural gas

(44) The Commission has previously considered that separate relevant product markets could exist for (i) the processing of crude oil, and (ii) the processing of natural gas.[35] The geographic scope of these two markets was considered to be the respective North Sea regions (NNS, SNS, and Norway). The Notifying Party does not dispute this market definition.

(45) In any event, the Commission considers that the exact delineation of the relevant market in this case may be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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[32] See responses to question 15 of the Commission's questionnaire to suppliers and to customers.

[33] Commission decision of 7 May 2002 in Case M.2745 – *Shell / Enterprise Oil*.

[34] Commission decision of 2 September 2015 in Case M.7631 – *Royal Dutch Shell/ BG Group*, paragraph 42; Commission decision of 7 May 2002 in Case M.2745 – *Shell / Enterprise Oil*.

[35] Commission decision of 2 September 2015 in Case M.7631 – *Royal Dutch Shell/ BG Group*, paragraph 43; Commission decision of 7 May 2002 in Case M.2745 – *Shell / Enterprise Oil*.

6. COMPETITIVE ASSESSMENT

(46) Pursuant to Article 2(2) and 2(3) of the Merger Regulation, the Commission is required to examine whether notified concentrations are to be declared compatible or incompatible with the internal market by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(47) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets. As regards non-horizontal effects, two broad types of such effects may be distinguished: vertical effects and conglomerate effects. Vertical effects are those deriving from a concentration where the undertakings concerned are active at different levels of the supply chain. Conglomerate effects may result from mergers between firms that are in a relationship, which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or costumers).

(48) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[36] Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.[37]

6.1. Horizontal overlap in the exploration of crude oil and natural gas

(49) In its decisional practice, the Commission analysed market shares on the market for the exploration of crude oil and natural gas on the basis of three criteria: reserves, expenditure and acreage of licences won.[38] The combined market share of the Parties on the market for the exploration of crude oil and natural gas in 2017 at the world-wide level amounted to [0-5]%, [0-5]% and [0-5]% in terms of commercial and sub-commercial reserves, expenditure and acreage of licences won, respectively.

(50) In view of the small combined market share of the Parties, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the exploration of crude oil and natural gas. In view of the negligible presence of the Parties on this market, the market for the exploration of crude oil and natural gas will not be further discussed in this decision.

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36 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

37 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-horizontal Merger Guidelines"), OJ C 265/6, 18.10.2008.

38 See Commission decision of 2 September 2015 in Case M.7631 – *Royal Dutch Shell/ BG Group*, paragraph 51.

6.2. Horizontal overlap in the upstream wholesale supply of crude oil

(51) The combined market share of the Parties on the market for the upstream wholesale supply of crude oil in 2017 amounted to [0-5]% (Total [0-5]% and Chevron Denmark [0-5]%) at the world-wide level, and to [5-10]% (Total [5-10]% and Chevron Denmark [0-5]%) at the EEA-level.

(52) In view of the small combined market share of the Parties and the minimal increment brought by the Transaction, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the upstream wholesale supply of crude oil. In view of the limited presence of the Parties on this market and the negligible increment resulting from the Transaction, the market for the upstream wholesale supply of crude oil will not be further discussed in this decision.

6.3. Horizontal overlap in the upstream wholesale supply of natural gas

(53) The Transaction leads to a horizontally affected market in the upstream wholesale supply of natural gas in Denmark and in Denmark – Sweden.

(54) The Parties' overlaps in the upstream wholesale supply of natural gas in (i) a plausible market encompassing the Netherlands, (ii) a wider Denmark-Sweden-Germany-Netherlands area, or (iii) the EEA do not result in a horizontally affected market.[39] In view of the small combined market share of the Parties (less than 10%), the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to these plausible markets.

(55) On the market for upstream wholesale supply of natural gas, the combined market share of the Parties in 2018 amounted to [40-50]% in Denmark and to [30-40]% in Denmark – Sweden. The Commission's competitive assessment focuses on the narrowest plausible market, i.e. Denmark since, if no competition concerns arise in Denmark, they also do not arise for a wider Denmark-Sweden region where the Parties' combined market share becomes lower (and given that there is no gas production in Sweden).

(56) The Notifying Party maintains that given the relationship with Ørsted (see paragraphs (58) – (60)) no competition concerns will arise.

(57) On the basis of the information submitted by the Notifying Party and the feedback from the market investigation, the Commission considers that no competition concerns will arise in relation to the upstream market in Denmark for the following reasons.

(58) First, as discussed in paragraph (12), all the Parties' activities in Denmark are done through or related to DUC and [most]% of DUC production is bought by Ørsted (formerly DONG), a publicly listed energy company owned at 50% by the

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[39] The combined market share of the Parties in 2017 amounted to [5-10]% in the Netherlands, to [5-10]% in Denmark-Sweden-Germany-Netherlands area, and to [0-5]% at the EEA-level.

* Should read: "in the 1970s".

Danish State, through separate Gas Supply Agreements ("GSAs") with each of the DUC partners, including the Parties.

(59) The GSAs were introduced […]*, and envisaged that Ørsted would benefit from "[…] sales" from the DUC gas production. The original set-up of the GSAs was depletion type contracts, under which 100% of the gas produced in Denmark had to be sold to Ørsted.[40] As of 2005, and following an antitrust investigation by the European Commission,[41] the DUC partners can sell certain amounts to other third parties. In the period 2005-2018, these amounts available for sale to third parties varied between 10% and 50%, apart from few exceptions. [Starting date of the new contractual obligations], and until the end of the Sole Concession in 2042, however, [most]% of the gas produced by the Parties through the DUC has to be sold to Ørsted. Prices, volumes and other conditions of the reserved sales to Ørsted are set out in the GSAs.

(60) Post Transaction, the individual GSAs will continue to apply and existing pricing and volumes will remain the same. Consequently, the volumes and prices available for Ørsted would not change as result of the Transaction.

(61) During the market investigation, Ørsted submitted that the Transaction would be beneficial for the Danish market, and it would translate into additional investments in the Danish North Sea from a DUC Partner committed to additional investment in the Danish offshore sector.

(62) Second, as regards the market sales of the Parties to other upstream wholesale gas customers (i.e. other than […] sales to Ørsted), Total and Chevron Denmark export a significant part of the remaining gas, so that the sales are made on neighbouring markets (mainly Germany and the Netherlands) where the market shares of the merged entity are small (i.e., [0-5]% in Germany and [5-10]% in the Netherlands). Within Denmark, the Parties' remaining gas which is not exported is traded on ETF or over-the-counter on GTF (downstream level), and examined under Section 6.4.

(63) Third, in 2017, imports in Denmark represented nearly 18% of Danish consumption. Approximately 29% of these gas imports came from Germany, while 71% came from Norway.[42] Imports will become even more important for Danish gas consumption, as DUC's production will decrease in 2020 and 2021 due to the Tyra redevelopment project for stabilizing the Tyra gas field and DUC's gas production.

(64) The fact that during certain periods (e.g., winter and the redevelopment of the Tyra platform) a large amount of gas is imported into Denmark suggests that Danish customers can rely on gas suppliers located outside Denmark and that the latter would exert a competitive constraint on the Danish gas suppliers.

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40 Under such contracts, all gas in a specified area/field is committed to the purchaser for the lifetime of the relevant field/concession (as opposed to classical supply contracts in which fixed and defined volumes, set in advance in the contract, would be delivered to the buyer).

41 Commission decision in Case E-4 38.187 – *DUC-DONG*.

42 Source: Danish Energy Regulatory Authority, "National Report Denmark 2017".

(65) Besides, the Baltic Pipe project, destined to connect Norway, Denmark and Poland, will enable Denmark to import gas from Norwegian gas fields earlier than expected, i.e. as early as of January 2022, according to recent announcements by Energinet.[43] During the market investigation, a major competitor of the Parties stated that the Baltic Pipe project could potentially open up a new source of supply of gas into Denmark, which in turn could attract more suppliers.[44]

(66) Lastly, during the market investigation no substantiated concerns were raised in relation to the market for the upstream wholesale supply of natural gas in Denmark.

(67) In view of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the upstream wholesale supply of natural gas.

6.4. Horizontal overlap in the downstream wholesale supply of natural gas

(68) The Transaction leads to a horizontally affected market in the downstream wholesale supply of natural gas in one of the narrowest plausible markets, which would be sales on ETF in Denmark (in 2017).

(69) The Parties' overlaps in the downstream wholesale supply of natural gas in other plausible markets, i.e. markets which would encompass either (i) sales on GTF in Denmark,[45] which constitutes another of the narrowest plausible markets, (ii) sales on both ETF and GTF in Denmark,[46] (iii) sales in Denmark-Sweden[47], or (iv) sales in the Netherlands,[48] do not result in a horizontally affected market. In view of the small combined market share of the Parties (less than 10% in 2018), the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to these plausible markets.

(70) The Notifying Party submits that the Transaction would not result in any material loss of competition in the market for the downstream wholesale supply of natural gas, regardless of how it is defined, because: (i) the merged entity will have a limited position on the downstream wholesale market in Denmark; (ii) Ørsted is the clear leader on the market; and (iii) apart from Ørsted, there are numerous other competitors on the market such as Axpo, Danske, E.ON, Uniper, EDF, RWE, Shell, NGF, Energi Danmark, CPUK.

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43 https://en.energinet.dk/About-our-news/News/2019/01/09/En-Baltic-Pipe.

44 See responses to question 29 of the Commission's questionnaire to suppliers.

45 The combined market share of the Parties on GTF amounted to [0-5]% in 2018, [0-5]% in 2017 and [0-5]% in 2016.

46 The combined market share of the Parties on both ETF and GTF amounted to [5-10]% in 2018, [10-20]% in 2017 and [5-10]% in 2016.

47 The combined market share of the Parties in Denmark-Sweden amounted to [5-10]% in 2018.

48 The combined market share of the Parties in the Netherlands amounted to [0-5]% in 2017.

(71) On one of the narrowest plausible markets, which would be sales on ETF in Denmark, the Parties' estimated market shares were as follows:

Parties' shares on the market for the downstream wholesale supply of gas on ETF in Denmark (2016 – 2018):

%	2018	2017	2016
Total	[5-10]%	[20-30]%	-[49]
Chevron Denmark[50]	[0-5]%	[0-5]%	[5-10]%
Combined	**[5-10]%**	**[20-30]%**	**[5-10]%**

(72) As evident from the table above, the Parties' combined market share on ETF has remained modest and has been below 25% in the last three years. In addition, in the last two years, Chevron Denmark's presence was negligible.

(73) Therefore, the Parties' market position on these narrow plausible markets remains limited. The evidence collected during the market investigation also consistently indicates that sufficient alternative sources of supply will be available post-Transaction, and that the Transaction is unlikely to significantly impede effective competition in the market for the following reasons.

(74) Firstly, Ørsted is a major competitor on the downstream wholesale market. For example, Ørsted's estimated market share on a plausible market encompassing ETF and GTF amounted to [90-100]%[51] in 2018 and [60-70]% in 2017.[52] In addition, there are other available suppliers as also confirmed in the market investigation.[53]

(75) Secondly, customers on the downstream wholesale market in Denmark are capable of sourcing gas directly from suppliers outside Denmark,[54] and switching a gas supplier is a relatively easy process in Denmark.[55] In addition, as discussed

49 The Notifying Party has not provided estimates for Total's market share in 2016.

50 Market share estimates for Chevron Denmark do not include quantities sold by Chevron Products UK Limited ("CPUK", not acquired by Total as part of the Transaction), which were independent from the gas production of Chevron Denmark. […].

51 Notifying Party's estimates; the volume indicated may be overestimated as it may include volumes that are exported by Ørsted and volumes that are not traded by Ørsted.

52 Notifying Party's estimates, Form CO paragraph 485.

53 See responses to question 23 of the Commission's questionnaire to suppliers and responses to questions 23 and 24 of the Commission's questionnaire to customers.

54 See responses to question 27 of the Commission's questionnaire to suppliers and responses to question 33 of the Commission's questionnaire to customers.

55 See responses to question 26 of the Commission's questionnaire to suppliers and responses to question 27 of the Commission's questionnaire to customers.

in paragraphs (63) to (65) above, there are current and future available imports of gas into Denmark.

(76) Moreover, respondents to the Commission's questionnaire did not consider themselves as dependent on either Total or Chevron Denmark for the procurement of gas at the wholesale level.[56]

(77) In view of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the downstream wholesale supply of natural gas.

6.5. Horizontal overlap in the offshore transportation of crude oil and natural gas by pipeline

Tyra West – F3 connection pipeline

(78) The Parties, through the DUC, own participating interests in one of the connection pipelines in the Danish North Sea, i.e., the Tyra West – F3 connection pipeline. Participating interests in the pipeline are as follows: Shell – 41.4%, Total – 35.1%, Chevron Denmark – 13.5%, and the North Sea Fund – 10%. Total is the operator of the pipeline. To date, no third party, other than the DUC members, is using the Tyra West– F3 pipeline.[57]

(79) Following the Transaction, the participating interests in the Tyra West – F3 pipeline will be as follows: Total – 48.6%, Shell – 41.4%, and the North Sea Fund – 10%. Total will remain the operator of the pipeline.

(80) The Notifying Party submits that the Transaction would not result in any negative effect as regards access to the Tyra West – F3 pipeline, because: (i) the governance of the pipeline will not be amended following the Transaction, and Total will not obtain any veto rights in relation to the pipeline; (ii) Total's duties and rights as operator of the pipeline are defined by a joint operating agreement with the owners of the pipeline, which will not be changed following the Transaction; (iii) the high level of spare capacity of the pipeline guarantees that third parties will be able to use the pipeline if they wish so; and (iv) access to the pipeline is regulated by the Danish Natural Gas Supply Act and Executive Order 920/2018, which provide for mandatory third party access rights.

(81) Based on the available evidence, the Commission considers that the Transaction is unlikely to result in unilateral effects as regards the Tyra West – F3 pipeline, due to the following reasons.

(82) The Tyra West– F3 pipeline has a very high spare capacity. The gas throughput over the past years has never exceeded […] (and has been decreasing to […] in the years 2013 – 2015) while the total capacity is […], thus leaving a current spare capacity of […]%.[58]

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56 See responses to question 28 of the Commission's questionnaire to customers.

57 Form CO, paragraph 346.

58 Form CO, paragraph 347.

(83) Each owner of a participating interest in the pipeline has the right to use and freely commercialize capacity in the pipeline corresponding to its percentage interest in the pipeline to other owners or third parties at its sole discretion. Therefore, there are no veto rights in relation to the use of spare capacity in the Tyra West – F3 pipeline.[59] Even if the merged entity were to restrict the capacity to which it is entitled, 51.4% of the available spare capacity of the pipeline will still be held by Shell and the North Sea Fund.

Interconnection gas and oil pipelines

(84) DUC owns interconnection crude oil pipelines between fields, operated by Total, and used by the Parties and third parties.

(85) As regards interconnection oil pipelines, Trym and the part of Lulita outside of the Sole Concession are the only third-party owned and operated fields producing oil transported through the DUC's interconnection pipelines. Trym partners are Faroe Petroleum and Spirit Energy. Partners for Lulita are INEOS and Noreco.

(86) Oil from both Trym and Lulita is transported, *inter alia*, through the DUC's interconnection oil pipelines Harald-Svend-Tyra East and Tyra East-Gorm E.

(87) Capacity and spare capacity (in BOPD)[60] in the oil interconnection pipelines are as follows:[61]

	Capacity	**Spare capacity**			
		2015	2016	2017	2018
Harald-Svend-Tyra East (owned by DUC and operated by Total)	[…]	[…]	[…]	[…]	[…]
Tyra East-Gorm E (owned by DUC and operated by Total)	[…]	[…]	[…]	[…]	[…]

(88) As regards interconnection gas pipelines, DUC owns an interconnection gas pipeline between fields, operated by Total, and used by the Parties, the Tyra West - Tyra East pipeline. The same four companies indicated in paragraph (85) above use this pipeline. Total is the operator of another interconnection gas pipeline, Harald - Tyra East, which is owned by Ørsted.

59 Form CO, paragraph 349.

60 Barrels of oil per day.

61 Form CO, paragraph 313.

(89) Capacities and spare capacities (in mmcfd) in the interconnection gas pipelines are as follows:[62]

	Capacity	**Spare capacity**			
		2015	2016	2017	2018
Harald - Tyra East (owned bv Ørsted and operated by Total)	[…]	[…]	[…]	[…]	[…]
Tyra West - Tyra East (owned bv the DUC and operated by Total)	[…]	[…]	[…]	[…]	[…]

(90) The Notifying Party submits that the Transaction would not result in any negative effect as regards access to interconnection gas and oil pipelines, because (i) access is regulated by the Danish Subsoil Act and by the Executive Order 1449/2017 about third party access to oil and gas facilities; and (ii) the pipelines have high spare capacity.

(91) In addition, the Notifying Party submits as regards the gas interconnection pipelines, that: (i) the Transaction will not have any impact on the governance of the DUC's assets, including the interconnection gas pipeline; (ii) Total's duties and rights as operator of the pipelines as defined by a joint operating agreement with the owners of the pipeline, will not change following the Transaction.

(92) Based on the available evidence, the Commission considers that the Transaction is unlikely to result in unilateral effects as regards the interconnection gas and oil pipelines, due to the following reasons.

(93) As evident above, all oil and gas interconnection pipelines have a high spare capacity.

(94) Access decisions for third parties are taken with an affirmative vote of the parties in the DUC holding individually or in aggregate a percentage interest in the DUC of at least [percentage of interest in the DUC required to have an affirmative vote]%. As the merged entity will hold 43.2% in DUC post Transaction, it will neither be able to take alone, nor to veto such a decision.[63]

(95) The duties and rights of Total as the operator of the DUC are defined by a joint operation agreement entered into with the DUC partners, which will remain in force until 2042 and will not change post Transaction.

(96) During the market investigation, the four companies that own and operate the fields using DUC's interconnection gas and oil pipelines did not raise any concerns.[64]

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62 Form CO, paragraph 327.

63 Form CO, paragraphs 279 – 284.

64 E-mails of 28 January, 1 February and 6 February 2019, sent to the Commission by Parties' customers.

Conclusion on offshore transportation of crude oil and natural gas by pipeline

(97) In view of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the offshore transportation of crude oil and natural gas by pipeline.

6.6. Horizontal overlap in the processing of crude oil and natural gas

(98) The DUC partners use four offshore processing hubs for gas and oil at Gorm, Dan, Halfdan and Tyra. The processing hubs are owned by the DUC (except Gorm E platform, which is owned by Danish Oil Pipe, a subsidiary of Ørsted) and are operated by Total.

(99) Trym (owned by Spirit Energy and Faroe Petroleum) and Lulita (owned by Ineos and Noreco) are the only third-party owned and operated fields that use the Tyra hub. The DUC's Gorm, Dan and Halfdan hubs are not used by any third party for the processing of gas, as these hubs only process oil.

(100) Capacity and spare capacity (in BOPD) of the DUC's processing hubs for oil in 2018 are as follows:[65]

	Capacity	**Spare Capacity**
Gorm	[…]	[…]
Dan	[…]	[…]
Halfdan	[…]	[…]
Tyra	[…]	[…]

(101) Capacity and spare capacity (in mmscfd) of the DUC's processing hubs for gas in 2018 are as follows:[66]

	Use	**Capacity**	**Spare Capacity**
Gorm[67]	Gas processing	[…]	[…]
	Gas export	[…]	[…]
Dan	Gas processing	[…]	[…]
	Gas export	[…]	[…]
Halfdan	Gas processing	[…]	[…]
	Gas export	[…]	[…]
Tyra	Gas processing	[…]	[…]
	Gas export	[…]	[…]

65 Form CO, paragraph 376.

66 Form CO, paragraph 390.

67 For Gorm, all the gas processing capacity is used for recirculating gas back into the wells for oil production. Thus, there is no gas nor capacity available for export.

(102) The Notifying Party submits that there is overall spare capacity for third party to request access to the processing hubs.[68] Spare capacity use is granted by the DUC with an affirmative vote of the parties having individually or in aggregate a percentage interest in the DUC of at least [percentage of interest in the DUC required to have an affirmative vote]%. As the merged entity will hold 43.2% in DUC post Transaction, it will neither be able to take alone nor to veto such a decision, and will thus be in the same situation as prior to the Transaction.[69]

(103) In addition, the Notifying Party also submits that the duties and rights of Total as the operator of the DUC assets are defined by a joint operating agreement entered into with the DUC partners, as owners of the processing hubs. The Transaction will not affect this agreement and therefore, the duties and rights of Total.[70]

(104) The Commission considers that the Transaction will not negatively affect competition in the market for the processing of crude oil and natural gas for the following reasons.

(105) There is overall enough spare capacity for third parties to request access.

(106) The merged entity will not be able to take alone decisions on access by third parties to the DUC processing hubs nor to veto such decisions.

(107) The duties and rights of Total as the operator of the DUC are defined by a joint operation agreement entered into with the DUC partners, which will remain in force until 2042 and will not change post Transaction.

(108) During the market investigation, the four companies that own and operate the fields using DUC processing hubs did not raise concerns as regards the impact of the Transaction on access by third parties to DUC processing hubs.[71]

(109) In view of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the processing of crude oil and natural gas.

6.7. Vertical links between upstream wholesale supply and the downstream wholesale supply of natural gas

(110) Based on the available evidence, the Commission considers that the Transaction is unlikely to result in any form of input or customer foreclosure.

(111) The Transaction does not create a new vertical link as the Parties are already active on the upstream wholesale supply and on the downstream wholesale supply of natural gas.[72]

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68 Form CO, paragraphs 380-381.

69 Form CO, paragraph 283.

70 Form CO, paragraphs 379 and 393.

71 E-mails of 28 January, 1 February and 6 February 2019, sent to the Commission by Parties' customers.

(112) With regard to input foreclosure, the market investigation has confirmed that most of the upstream gas production of the Parties is sold to Ørsted under long-term gas supply agreements. Other than the sales to Ørsted, the Parties also export part of the remaining gas on neighbouring markets (mainly the Netherlands), where their presence on the market is negligible (see paragraph (54).

(113) With regard to customer foreclosure, the Transaction would not materially strengthen the Parties' position on the downstream market for wholesale supply of gas. The Parties' combined position on the market for downstream wholesale supply of gas would be modest, there are a number of other alternative suppliers available on the market, including the strong competitor Ørsted, and market participants are capable of sourcing gas directly from suppliers outside Denmark (see paragraphs (68) - (76)). Therefore, the merged entity would not have the ability to foreclose access to the downstream market. Moreover, market respondents indicated that they would source gas from alternative suppliers if Total would increase prices for the supply of natural gas by 5-10% on a non-transitory basis,[73] and switching a gas supplier is a relatively easy process in Denmark.[74]

(114) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the upstream wholesale supply and the downstream wholesale supply of natural gas in Denmark or in other parts of the EEA.

6.8. Vertical links between offshore transportation by pipeline and processing of natural gas and wholesale (upstream and downstream) supply of natural gas

(115) The Commission has also considered whether the Transaction may strengthen the existing vertical link between the Parties' offshore transportation and processing activities and upstream and downstream wholesale supply of gas. However, the Commission is of the view that the merged entity's ability and incentives to engage in foreclosure strategies are unlikely to be materially affected by the Transaction.

(116) The Transaction does not create a new vertical link as the Parties are already active in the markets for offshore transportation by pipeline and processing of natural gas and in the markets for upstream and downstream wholesale supply of natural gas.

(117) As explained above, there is significant spare capacity in gas and oil pipelines and processing hubs (see paragraphs (82), (87), (89), (100), (101)). The merged entity

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[72] Contrary to what the Notifying Party submits, the Commission considers that Chevron Denmark is active on the downstream market for wholesale supply of natural gas in Denmark, notwithstanding that all of the gas produced by Chevron Denmark through the DUC is sold internally to Chevron Products UK Limited ("CPUK") and the latter then further sells it either upstream or downstream. CPUK is not part of the Transaction.

[73] See responses to question 29 of the Commission's questionnaire to customers.

[74] See responses to question 26 of the Commission's questionnaire to suppliers and responses to question 27 of the Commission's questionnaire to customers.

would not enjoy a veto right in relation to the use of such spare capacity post Transaction. As regards the Tyra West – F3 connection pipeline, each owner of a participating interest in the pipeline has the exclusive right to use and freely commercialize capacity in the pipeline corresponding to its percentage interest in the pipeline to other owners or third parties at its sole discretion. As regards interconnection gas and oil pipelines, access decisions for third parties are taken with an affirmative vote of the parties in the DUC holding individually or in aggregate a percentage interest in the DUC of at least [percentage of interest in the DUC required to have an affirmative vote]%. As the merged entity will hold 43.2% in DUC post Transaction, it will neither be able to take alone, nor to veto such a decision. The merged entity will not be able to take alone decisions on access by third parties to the DUC processing hubs nor to veto such decisions either. Therefore, the Parties would not appear to have the ability to foreclose downstream competitors to any material extent as a result of the Transaction.

(118) As most of the upstream gas production of the Parties is sold to Ørsted under long-term gas supply agreements (see paragraphs (58) and (59)), and the Parties' position on the downstream market for wholesale supply of gas would not be materially strengthened (see paragraphs (68) to (76)), the Transaction is unlikely to increase the incentives to foreclose the Parties' downstream competitors to any material extent. Moreover, no concerns were raised by market participants about the risk of the merged entity carrying out discriminatory conduct in the provision of access to offshore transportation by pipeline and processing of natural gas.

(119) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between offshore transportation by pipeline and processing of natural gas, and wholesale (upstream and downstream) supply of natural gas in Denmark or in other parts of the EEA.

7. CONCLUSION

(120) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission