EN

Case No COMP/M.4919 – STATOILHYDRO/ CONOCOPHILLIPS

Only the English text is authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 8 (2)
Date: 21/10/2008

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/10/2008
C(2008)6125final

PUBLIC VERSION

COMMISSION DECISION

of 21/10/2008

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case No COMP/M.4919 - STATOILHYDRO/ CONOCOPHILLIPS)

COMMISSION DECISION

of 21/10/2008

declaring a concentration to be compatible with the common market

and the EEA Agreement

(Case No COMP/M.4919 STATOILHYDRO / CONOCOPHILLIPS)

(Only the English text is authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 13 May 2008 to initiate proceedings in this case,

After consulting the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case[2],

Whereas:

1. INTRODUCTION

(1) On 14 March 2008, the Commission received a notification pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") of a proposed concentration by which the undertaking StatoilHydro ASA ("SH", Norway) acquires within the meaning of Article 3(1)(b) of the Merger Regulation the Scandinavian

[1] OJ L 24, 29.1.2004, p. 1.

[2] OJ C

petroleum businesses of ConocoPhillips Company ("ConocoPhillips", United States of America), namely ConocoPhillips Denmark APS ("JET Denmark"), ConocoPhillips Nordic AB ("JET Sweden") and ConocoPhillips JET AS ("JET Norway").[3] JET Denmark will be acquired by Statoil A/S (Denmark), JET Sweden by Svenska Statoil AB (Sweden) and JET Norway by Statoil Norway AS (Norway).

(2) SH and JET Scandinavia will be referred together as "the Parties" in this Decision.

(3) After examination of the notification, the Commission concluded on 13 May 2008 that the notified operation fell within the scope of the Merger Regulation and that it raised serious doubts as to its compatibility with the common market and the EEA Agreement. The Commission therefore initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

(4) On 22 May 2008 the Commission provided SH with a non-confidential version of a key document.

(5) On 30 May 2008 SH submitted comments on the Commission's decision pursuant to Article 6(1)(c) of the Merger Regulation ("the Article 6(1)(c) decision").

(6) On 5 June 2008 the Commission requested clarifications of some of the arguments put forward in SH's comments on the Article 6(1)(c) decision.

(7) On 20 June 2008 the Commission adopted two decisions under Article 11(3) of the Merger Regulation requesting information from SH and ConocoPhillips. The time limits referred to in Article 10(1) and (3) of the Merger Regulation were suspended for the period between the end of the time limits fixed in the first requests for information (23 May 2008[4]) and the receipt of complete and correct information required by the decisions (17 July 2008). Following the suspension of the time limits, the legal deadline for the adoption of a decision in this case is 12 November 2008.

(8) On 27 June 2008, SH submitted a proposal for commitments with a view to render the concentration compatible with the common market.

(9) On 8 July 2008, SH submitted clarifications of the arguments put forward in its comments on the Article 6(1)(c) decision.

(10) On 25 July 2008, SH submitted a revised proposal for commitments which was subsequently "market tested" by the Commission.

(11) On 1 September 2008, SH submitted a second revised proposal for commitments which had been amended to address certain shortcomings of the previous proposal identified during the market test.

(12) Further investigative steps were taken by the Commission during the second phase investigation. A second set of questionnaires was sent to the Parties and their competitors. Consumer surveys were conducted in Norway and Sweden. Additional

[3] The Scandinavian businesses of ConocoPhillips will collectively be referred to as "JET Scandinavia".

[4] The request for information was sent on 15 May 2008 with a deadline to reply on 23 May 2008.

data requests were sent to the Parties and their competitors in Norway and Sweden. The additional data was used to further refine the econometric analysis that had been carried out during the first phase-investigation. The robustness of the conclusions was thoroughly tested.

2. THE PARTIES

(13) SH is an integrated oil and gas company active in the exploration and production of crude oil and natural gas (mainly in Norway) and refining and retail and non-retail sales of fuels and other oil derivatives. SH was created in 2007 when Statoil ASA acquired Norwegian oil and gas company Norsk Hydro ASA.[5] SH operates retail motor fuel outlets in Denmark, Norway and Sweden under the "Statoil" brand.[6] In addition, the company operates retail motor fuel outlets in Sweden under the "Hydro" brand.

(14) JET Scandinavia operates retail motor fuel outlets in Denmark, Norway and Sweden under the "JET" brand. JET Sweden also owns storage facilities for refined petroleum, one of which is dedicated to supplying JET Norway's retail network.

3. CONCENTRATION

(15) Through the proposed transaction, SH will acquire sole control over JET Scandinavia. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. COMMUNITY DIMENSION

(16) The Parties have a combined aggregate worldwide turnover of more than EUR 5 000 million. SH's worldwide turnover in 2006 amounted to EUR 65 400 million. In the same year JET Denmark's worldwide turnover was EUR […][*] million[7], JET Norway's worldwide turnover was EUR […]* million[8] and JET Sweden's worldwide turnover amounted to EUR […]* million[9]. JET Scandinavia's total worldwide turnover in 2006 was EUR […]* million.

---

5 See case COMP/M.4545 – Statoil/Hydro.

6 SH also operates retail motor fuel outlets in Poland, Russia, Estonia, Lithuania and Latvia.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk

7 DKK […]* = EUR […]*. Average exchange rate for 2006 EUR 1 = DKK 7.4591 as published in the ECB Monthly Bulletin, January 2007.

8 NOK […]* = EUR […]*. Average exchange rate for 2006 EUR 1 = NOK 8.0472 as published in the ECB Monthly Bulletin, January 2007.

9 SEK […]* = EUR […]*. Average exchange rate for 2006 EUR 1 = SEK 9.2544 as published in the ECB Monthly Bulletin, January 2007.

(17) Each of the Parties has an aggregate Community turnover exceeding EUR 250 million. SH's turnover in the Community in 2006 amounted to EUR […]* million. In the same year, JET Denmark's Community turnover was EUR […]* million and JET Sweden's EUR […]* million, giving a total Community-wide turnover of EUR […]* million for JET Scandinavia.

(18) Neither SH nor JET Scandinavia achieved more than two-thirds of their respective Community-wide turnovers in one Member State.

(19) The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

5. RELEVANT MARKETS

5.1. Introduction

(20) SH and JET Scandinavia are both active in the markets for retail sales of motor fuel. SH operates fuel station networks mainly under the "Statoil" brand in Scandinavia. JET Scandinavia operates fuel station networks under the "JET" brand in Scandinavia.

(21) Integrated oil companies like SH obtain most of their supplies from their own crude-oil refining operations. Such companies may occasionally purchase product ex-refinery or ex-cargo from other refiners or oil traders. Non-integrated oil companies such as JET Scandinavia obtain supplies on an ex-refinery, ex-cargo or ex-terminal (ex-rack) basis, through a mix of short and long-term agreements and "spot" deliveries.

5.2. Definition of the relevant product market

(22) In previous decisions, the Commission has considered that the sale of refined oil products to motorists through service stations constitutes a distinct product market without there being a need to distinguish between different types of fuel such as petrol, diesel and LPG.[10]

(23) There is no demand-side substitutability between these products because motorists must use the type of fuel appropriate to their vehicle. From a supply-side perspective, however, at least petrol and diesel are always distributed in the same retail outlets, because service stations seek to serve the maximum number of automotive customers. [11]

(24) The overall market for retail sales of motor fuel may possibly be sub-divided further, depending on the type of outlet. The following sub-markets may be considered: (i) motorway stations, (ii) rural stations, (iii) diesel truck stations (stations dedicated to

---

[10] See Commission decisions in case COMP/M.4532 – Lukoil/ConocoPhillips, recital 7; case COMP/M.4348 – PKN/Mazeikiu, recital 16, case IV/M.1383 – Exxon/Mobil; case COMP/M.3516 – Repsol YPF/Shell Portugal and case COMP/M.3291 – Preem/Skandinaviska Raffinaderi.

[11] See for example case COMP/M.3291 – Preem/Skandinaviska Raffinaderi, recital 12.

diesel supply with high speed pumps for trucks and buses) and (iv) marine stations. The Commission has previously left open whether such sub-markets ought to be defined[12]. In this case the question may also be left open since JET Scandinavia does not operate any of these types of station.

(25) For the purpose of this Decision, the relevant product market may therefore be defined as the market for retail sales of motor fuels.

5.3. Definition of the relevant geographic markets

(26) Despite the existence of local competitive elements - car owners tend to use service stations in the vicinity of their home or place of work - the Commission has previously considered that the market for retail sales of motor fuel is predominantly national in scope.[13]

(27) The product market is national for several reasons. First, many service stations have largely overlapping catchment areas, which create "knock-on" pricing effects. Second, the most important competitive parameters tend to be decided at a national rather than at a local level (for example prices, product range, product sourcing, quality and service levels and promotional activities), although variations exist between the various service-station chains. Third, competing service-station chains tend to have broadly similar market shares across individual countries.[14]

(28) Most retail fuel chains monitor neighbouring retail fuel stations. These companies define a list of stations around each of their own stations ("clusters"). In these clusters, prices are monitored regularly and competitors' prices are used to adjust each station's prices to the local competitive level. Since most clusters are partially overlapping, most service stations in a country are constrained by other stations through a chain-of-substitution effect. However, the local prices are also related to recommended national prices set by each company.

(29) On balance, it is therefore relevant to assess the effects of the proposed concentration at a national level, but this assessment has to take into account that competition also takes place at the local level.

6. COMPETITIVE ASSESSMENT

6.1. Introduction

(30) The Commission has investigated the impact of the proposed concentration on competition in the retail motor fuels markets in Denmark, Sweden and Norway respectively, that is to say the markets in which JET Scandinavia is active. Both SH and JET Scandinavia operate depots and terminals for storage and secondary

---

12 See COMP/M. 4545 – Statoil / Hydro.

13 See for instance, case IV/M.1383 – Exxon/Mobil.

14 See for instance case COMP/M.4348 – PKN/Mazeikiu, recital 29; case COMP/M.4532 – Lukoil/ConocoPhillips, recital 17; case IV/M.1383 – Exxon/Mobil, recitals 440-441.

distribution of motor fuels. These activities form part of the merging Parties' internal supply and distribution arrangements for retail sales of motor fuels and do not constitute a distinct upstream product market. Given these circumstances and the fact that SH's market shares do not exceed 30% in any upstream market, any significant vertical effects of the merger can be excluded.

6.2. Retail sales of motor fuels in Denmark

6.2.1. Market conditions

Market shares

(31) The respective market shares (by volume) of the main suppliers in the Danish market for retail sales of motor fuels are set out in table 1 below.

Table 1 - Retail sales of motor fuels – Denmark (incl. petrol and diesel – excluding truck diesel) (in 1000 m³)

Retail Motor Fuels	2005		2006		2007	
	Volume	%	Volume	%	Volume	%
OK	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
Shell	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
StatoilHydro	[…]*	[10-20]*	[…]*	[10-20]*%	[…]*	[10-20]*
YX Energi	[…]*	[10-20]*	[…]*	[10-20]*	[…]*	[10-20]*
Q8	[…]*	[10-20]*	[…]*	[10-20]*	[…]*	[10-20]*
JET	[…]*	[5-10]*	[…]*	[5-10]*	[…]*	[5-10]*
Others	[…]*	[0-5]*	[…]*	[0-5]*	[…]*	[0-5]*
StatoilHydro/JET	[…]*	[20-30]*	871	[20-30]*	897	[20-30]*
Total	**[3,000-3,500]***	**100**	**[3,500-4,000]***	**100**	**[3,500-4,000]***	**100**

Source: Notification.

Capacities and depots

(32) Two refineries are located in Denmark, one is owned by SH and the other by Shell. The overall capacity utilisation in the Danish market has declined from 92% in 2000 to 86% in 2006. Total refinery production has not exceeded demand since 1996 but "production levels have closely followed those of demand"[15].

[15] Notification, annex C3, PFC report, pp. 30-31.

(33) As regards storage in Denmark, there are few logistical constraints. SH has a strong position as regards storage capacity in Denmark. SH operates three main depots, including one in Kalundborg which has the largest single concentration of storage capacity in Denmark[16]. SH has concluded exchange agreements in Denmark with […]*,[…]* and […]*[17]. SH has also concluded throughput agreements with […]*,[…]* and […]*[18].

(34) JET Denmark has no storage depots or terminals in Denmark. JET Denmark sources its fuel from […]* depots owned by […]*.

<u>Volumes, market shares and pricing</u>

SH

(35) SH is the third largest supplier in the Danish market for retail sales of motor fuel with a market share of [10-20]*% (by volume) in 2007. All Statoil stations sell petrol and diesel. SH operated 309 fuel stations in 2007, 67 of which were automated. SH has the fourth highest average throughput per station in the Danish market ([2,000-2,500] m³ per year per site). The company is seen as a price leader in the market.[19]

JET Denmark

(36) JET Denmark entered the Danish market in 1985 by opening approximately ten stations. Since then, JET Denmark has extended its network mainly by "green-field" construction of new sites rather than by acquisitions. JET Denmark currently operates 67 fuel stations and […]*[20]. JET Denmark has the highest throughput per site in the Danish market with […]*m³ per year per site in 2007. However, JET's overall market share in the Danish market for retail sales of motor fuel (diesel and petrol) is modest: approximately [5-10]*% in 2007.

(37) JET Denmark operates the only purely automated network in Denmark and the company is considered as one of the price leaders in the market.[21] In addition, JET Denmark's network was modernised in 2004-2007, for example introduction of new site image, new electronic price signs and tank gauging systems. JET Denmark's network covers the most populated areas of the country ([40-50]*% of JET Denmark's network is located in the ten biggest municipalities).

OK a.m.b.a.

---

16 Notification, annex C3, PFC report, p. 38.

17 Exchange agreements are arrangements whereby one supplier is able to pick up the product from another's supplier's depot in return for the other supplier being able to pick up product from the first's supplier depot.

18 Throughput agreements are arrangements whereby one supplier stores its own product in another supplier's depot while remaining the owner of the product.

19 Notification, annex C3, PFC report, p. 42.

20 […]*.

21 Notification, annex C3, PFC report, p. 42.

(38) OK a.m.b.a.[22] ("OK") – a co-operative consumer association ultimately owned by its members - is the largest supplier in the Danish market for retail sales of motor fuel. In 2007, OK had a market share of approximately [20-30]*% (by volume) and the association operated 36% of Denmark's fuel stations in 2006. The OK network has expanded in recent years, in particular after the acquisition of the DK Benzin network in 2004[23]. OK has among the lowest average throughputs per site in the Danish market ([1,000-1,500]*^{3} per site per year).

A/S Dansk Shell

(39) A/S Dansk Shell[24] ("Dansk Shell") – a subsidiary of Royal Dutch Shell plc (United Kingdom) - is the second largest supplier in the Danish market with a market share of approximately [20-30]*% (by volume) in 2007. Dansk Shell operates 289 fuel stations in Denmark of which 71 are automated stations. Dansk Shell's network has an average throughput of [2,500-3,000]* m3 per site per year (the second highest after JET). In 2007 Dansk Shell concluded an agreement with Reitangruppen (Norway) according to which Dansk Shell will supply 66 YX Energi stations with fuel in Denmark. Some stations will be re-branded "Shell".[25]

YX Energi A/S

(40) YX Energi A/S is the fourth largest supplier in the Danish market for retail sales of motor fuels with a market share of [10-20]*% (by volume) in 2007. YX Energi operates a network of 365 fuel stations, of which 219 are automated stations (branded "Uno-X"). In 2007 Reitangruppen and Dansk Shell concluded an agreement according to which Dansk Shell will supply 66 YX Energi stations with fuel. Despite recent attempts at rationalisation, YX Energi's average throughput per site is the second lowest in Denmark ([1,500-2,000]* m^3 per site per year). However, YX Energi is currently converting full-service stations to automated stations to increase its efficiency.

Q8 – Kuwait Petroleum (Danmark) A/S

(41) Q8 – Kuwait Petroleum (Danmark) A/S ("Q8") – a subsidiary of Kuwait Petroleum International (Kuwait) - is the fifth largest retail supplier of motor fuel in Denmark with a market share of approximately [10-20]*% (by volume) in 2007. Q8 operates 242 fuels stations in Denmark, of which 53 are automated. Q8's average throughput per site per year is the third highest in the country with [2,000-2,500]*m^3 per site per year. Q8's market share has decreased since the early 1990s, when the company had a market share of approximately [20-30]*%.[26]

Market entry

[22] www.ok.dk.

[23] Notification, annex C3, PFC report, p. 47.

[24] http://www.shell.com/home/Framework?siteId=dk-da.

[25] Notification, annex C3, PFC report, p. 51.

[26] Notification, annex C3, PFC report, p. 50.

(42) The Parties submit that there have been two recent entries into the Danish retail market for motor fuels. The first occurred in 2006 when Reitan Servicehandel AS ("Reitan") entered the market and the second when A/S Haahr Benzin ("Haahr") re-entered the Danish market in 2007.[27] Reitan acquired an existing network previously owned by Hydro Texaco (now rebranded "YX Energi"). Haahr currently operates fuel stations located at seven Aldi grocery stores in Denmark.[28]

6.2.2. Assessment

(43) The Parties submit that competition is intense in the Danish market, that there is no dominant player and that there are many automated stations competing with JET Denmark's automated network. In addition, the Parties submit that coordinated effects are unlikely to occur because of the presence of several differentiated (in terms of business strategies, profiles and pricing strategies) competitors in the market.

(44) In contrast to Sweden and Norway, the Commission's market investigation has not revealed any competition concerns regarding the effects of the proposed transaction in Denmark. This difference appears to be attributable to two main features of the Danish market.

(45) Firstly, the level of market concentration is lower. Six main suppliers are active in the market for retail motor fuel in Denmark and none of them have a market share exceeding 25%.

(46) Secondly, JET Denmark's market share (by volume) is limited ([5-10]*%) and the merging Parties will obtain a combined market share of approximately [20-30]*%[29], which is close to the market shares of OK ([20-30]*%) and Shell ([20-30]*%). In addition, there are two other significant competitors, namely YX Energi ([10-20]*%) and Q8 ([10-20]*%).

(47) In Denmark, the merged entity will continue to face competition, from the remaining players, and particularly from Shell. The latter has a high average throughput per site, the second highest after JET. Moreover, Shell is expanding, as demonstrated by its recent agreement with YX Energi. Finally, Shell owns one of the two refineries located in the country.

(48) In addition, even though JET Denmark is the only purely automated network in Denmark, YX Energi is currently converting a substantial number of its full-service stations into automated stations. 73% of YX Energi's network in Denmark is now automated.

(49) A breakdown between the Danish regions where JET Denmark is active (Jutland, Funen, Zealand) does not significantly change the assessment.

---

[27] The previous Haahr network of fuel stations was sold to Statoil in 2004.

[28] www.haahrbenzin.dk

[29] Measured by number of fuels stations JET has 3.5% and the merged entity would have 18.7% (2006).

(50) In Jutland and Funen, JET Denmark has a lower market share than at national level (approximately [5-10]*%) and the merging Parties have a similar combined market share (Jutland: [20-30]*%; Funen: [20-30]*%). In addition, the merged entity will still face significant competitors, some of which have similar or higher market shares.

(51) In Zealand, JET Denmark has a stronger presence with a market share of approximately [10-20]*%, and the new entity would be the largest supplier since the Parties have a combined market share of [30-40]*%. However, the new entity would still face four major competitors (Shell: [20-30]*%; OK: [10-20]*%; Q8: [10-20]*%; YX Energi: [10-20]*%) that will exert a competitive constraint on the new entity.

(52) Finally, the econometric analysis of pricing data carried out by the Commission did not show that JET Denmark has any significant impact on Statoil's prices.

6.2.3. Conclusion

(53) At the end of the first-phase investigation, the Commission did not raise any particular competition concerns regarding the Danish market for retail sales of motor fuel. The second-phase investigation has not revealed any elements that would cause the Commission to modify this assessment. It is therefore concluded that the proposed transaction does not raise any competition concerns as regards the Danish market for retail sales of motor fuels.

6.3. Retail sales of motor fuels in Sweden

6.3.1. Market conditions

SH and JET Sweden - network descriptions

SH

(54) SH is the largest retail supplier of motor fuels in Sweden. The company operates full-service fuel stations under the "Statoil" and "Hydro" brands and automated fuel stations under the "1-2-3", "Hydro" and "Uno-X" brands. Statoil's own network consists of 562 fuel stations (478 full-service stations and 84 automated fuel stations branded "Statoil" or "1-2-3"). Following Statoil's merger with Hydro in October 2007, SH also owns Hydro's fuel station network which comprised 426 stations at the end of 2007 (376 automated fuel stations branded "Hydro" or "Uno-X", 45 full-service stations under the "Hydro" brand and 5 unbranded stations ("white pumps")). In addition, Hydro supplies […]* "ICA Tapp" and "ICA Bensin"-branded fuel stations belonging to the ICA supermarket chain. In all, SH operated approximately [1000-1050]* fuel stations at the end of 2007. Almost all SH stations supply petrol and diesel and 258 Statoil stations offer the "E85" biofuel.[30] Among Hydro's stations, 371 supply diesel and 85 offer E85.

(55) The Statoil network ("Statoil" and "1-2-3" brands) had an estimated average throughput per station of [2,500-3,000]* m3 in 2007 (petrol and diesel, excluding

[30] E85 is a blend of ethanol (85%) and petrol (15%) used in flexi-fuel vehicles adapted to run on high blend ethanol fuels. Flexi-fuel vehicles may also run on pure petrol.

truck diesel), whereas the average throughput per station of the Hydro network ("Hydro" and "Uno-X" brands) was estimated to be [1,000-1,500]* m3 in the same year. The much lower average throughput of the Hydro network is explained by the fact that the network includes a large number of stations with very low throughputs (less than [500-1,000]* m3 per year).

(56) SH offers volume-based rebates to users of Statoil payment cards. Customer rebates are driven by the price differential between full-service and automated stations. No rebates are offered at Statoil's "1-2-3" outlets.

(57) SH owns fuel depots in 12 locations in Sweden.[31] By means of […]* agreements, SH also sources motor fuel from depots owned by competitors.

JET Sweden

(58) JET Sweden is the country's sixth largest supplier of retail motor fuels operating a network of 163 automated fuel stations under the "JET" brand. In addition to petrol, JET Sweden supplies diesel and E85 in 155 stations. With an average throughput of [4,500-5,000]*m3 per station in 2007, JET Sweden has the highest average throughput by far of all fuel station networks in Sweden. This is explained among other things by the fact that JET fuel stations tend to be located in good locations in the most densely populated areas of Sweden. JET Sweden applies a "no-rebates" policy offering only net prices at the pump.

(59) JET Sweden co-owns (with Hydro) two fuel depots in Sweden.[32] The company owns a third fuel depot located in Strömstad close to the Norwegian border […]* used to supply JET's Norwegian operations. By means of […]* agreements, JET Sweden also sources motor fuel from depots owned by competitors.

Market shares

(60) The respective market shares (by volume) of the main suppliers in the Swedish market for retail sales of motor fuels are set out in table 2 below. Since Statoil gained control over Hydro only in October 2007, the market shares of the Statoil and Hydro networks are listed separately.[33]

[31] Two of these depots are co-owned by Hydro and JET. Notification, annex E-18.

[32] Notification, annex E-18.

[33] Sales data based on turnover is not available. However, market shares based on turnover is most unlikely to differ more than marginally from shares based on volume, since the relative price differences between suppliers are small in relation to the total fuel price. Alternatively, market shares could be calculated on the number of fuel stations operated by each supplier. However, since the volumes sold by each station vary substantially (up to 20 times difference in throughput) this measure would not correctly reflect suppliers' market positions. It would over-estimate the importance of networks with a large number of outlets with very low throughputs (such as Hydro's) and underestimate networks consisting of outlets with high throughputs (such as JET's). Incidentally, the merged firm's total market share calculated on the number of fuel stations would be approximately 32% (Statoil 15.7%, Hydro 11.9%, JET 4.5%).

Table 2 - Retail sales of motor fuels – Sweden (incl. petrol and diesel – excluding truck diesel) (in 1000 m³)						
Retail Motor Fuels	2005		2006		2007	
	Volume	%	Volume	%	Volume	%
OK-Q8	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
Statoil	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
Shell	[…]*	[10-20]*	[…]*	[10-20]*	[…]*	[10-20]*
Preem	[…]*	[5-10]*	[…]*	[5-10]*	[…]*	[10-20]*
Hydro	[…]*	[5-10]*	[…]*	[5-10]*	[…]*	[5-10]*
Tanka	[…]*	[5-10]*	[…]*	[5-10]*	[…]*	[5-10]
JET Sweden	[…]*	[10-20]*	[…]*	[10-20]*	[…]*	[10-20]*
Others	[…]*	[0-5]	[…]*	[0-5]	[…]*	[0-5]
StatoilHydro + JET	[…]*	[40-50]	[…]*	[40-50]	[…]*	[40-50]*
Total	[6,000-6,500]*	100.0	[6,000-6,500]*	100.0	[6,000-6,500]*	100.0

Source: Notification

(61) Following the merger with Hydro, SH is the largest retail supplier of motor fuels in Sweden with a market share of approximately [30-40]*% (Statoil [20-30]*%, Hydro [5-10]*%). The proposed transaction would give a combined SH/JET Sweden a total market share of approximately [40-50]*% (SH [30-40]*%, JET [10-20]*%) based on 2007 sales volumes of motor fuels. The largest competitor to the merged firm – OK-Q8 AB - would have a market share of approximately [20-30]*%, that is to say less than half of SH/JET Sweden's market share and the second largest competitor – Shell – would be even further behind with a market share of [10-20]*%.

(62) SH argues that simply adding historical market shares of SH and JET Sweden will over-estimate the merged firm's future share of the market. Following its acquisition of the Hydro network in 2007, SH has embarked upon a far-reaching closure programme […]*. SH intends to close (or divest) [some Hydro stations]*. Of the [400-500]* Hydro stations existing at the end of 2007, SH intends to retain […]*. In addition, SH is in the process of closing a number of underperforming Statoil stations. According to those plans, the final integrated Statoil/Hydro network is foreseen to include [650-700]* fuel stations ([…]* full service stations, […]* automated stations).

(63) If these closures and divestitures were to be taken into account, the combined market share of Statoil and Hydro would be approximately [20-30]*% and SH estimates that

the merged entity's (Statoil/Hydro/JET Sweden) future market share would be approximately [30-40]*%.[34]

(64) The Commission does not contest the fact that SH is in the process of closing or divesting a significant number of fuel stations. However, reducing the presumed future market share on the basis of a single set of assumptions about future events that may take place in the next […]* years (that is to say closures) is a difficult and imprecise exercise. Such assumptions are very uncertain by nature. In any event, to be meaningful at all, such estimations must also include other parameters influencing market developments such as market trends and competitors' reactions to both such closures and the proposed concentration. For those reasons, it is prudent in this case to look at the merging Parties' historic market shares when assessing the competitive impact of the proposed concentration.

(65) Regardless of the exact market share of the merged firm, the fact remains that, pre-merger, SH is already the largest supplier by far in the Swedish market for retail sales of motor fuels and by acquiring JET Sweden – thereby adding a substantial increment to its market share – SH will further consolidate its position as the leading service-station chain in the Swedish market.

Competitors

(66) The main competitors to SH and JET Sweden in the Swedish market for retail sales of motor fuels are briefly described in recitals 67-71 below.

OK-Q8

(67) OK-Q8 was formed in 1999 as a joint venture between OK ekonomisk förening (a co-operative consumer association ultimately owned by its members) and Kuwait Petroleum International (Kuwait). The company operates 735 fuel stations (455 full-service stations and 280 automated stations)[35] in Sweden and has an estimated market share of approximately [20-30]*%. In 2007 OK-Q8 had an estimated average throughput per station of [1,500-2,000]* m3. The company is the sole supplier of fuel to the Tanka network (see recital 70 below).

---

[34] SH's figure is a "dynamic estimate" taking into account not only planned future closures but also estimated market share losses due to network restructuring.

[35] Notification, p. 217. On the company web-site www.okq8.se (version of 4 September 2008) it is stated that the company's network comprises more than 1 000 stations. However, this figure presumably includes the Tanka network as well.

AB Svenska Shell

(68) AB Svenska Shell – a subsidiary of Royal Dutch Shell plc (United Kingdom) – operates 385 fuel stations (136 full-service stations and 128 automated stations)[36] in Sweden and has a market share of approximately [10-20]*%. Svenska Shell had an estimated average throughput per station of [2,000-2,500]* m3 in 2007.

Preem Petroleum AB (publ)

(69) Preem Petroleum AB (publ) ("Preem") - owned by Mr Mohammed Al-Amoudi (Saudi-Arabia) – operates approximately 470 fuel stations[37] (of which approximately half are full-service and half automated) and has a market share of approximately [10-20]*%. Preem had an estimated average throughput per station of [1,000-1,500]* m3 in 2007.

Tanka AB

(70) Tanka AB is a fuel station network operated by Volvo dealerships in Sweden.[38] The fuel stations in the Tanka network are located at (or next to) the premises of a Volvo dealership. The Tanka network consists of 180 automated fuel stations with an estimated market share of approximately [5-10]*%. Tanka sources its fuel from OK-Q8. The estimated average throughput per station was [2,500-3,000]* m3 in 2007.

Others

(71) In addition, several smaller competitors are active in the Swedish market for retail sales of motor fuels, notably Bilisten AB (240 fuel stations)[39], Skandinaviska Bensin AB din-X (Din-X) (150 fuel stations[40]), Svenska Oljebolaget AB (approximately 130 stations branded "Pump" and "Gulf")[41], Q-Star (100 fuel stations)[42], St1 Sweden AB ("St1") (41 fuel stations) and ICA-Tapp (62 stations[43]). Together, these companies

---

36 Figures indicated on the company web-site www.shell.se on 4 September 2008. According to the Notification, p. 218, […]*.

37 Figure indicated on the company web-site www.preem.se on 4 September 2008. According to the Notification, p. 220, […]*.

38 See www.tanka.se 7

39 Figure indicated on the company's web-site www.bilisten.se on 4 September 2008. According to the Notification, p. 223, […]*.

40 Figure indicated on the company's web-site www.dinx.se on 4 September 2008. According to the Notification, p. 223, […]*.

41 Figure indicated on the company's web-site www.svenskaoljebolaget.se on 4 September 2008. According to the Notification, p. 223, […]*.

42 Figure indicated on the company's web-site www.qstar.se on 4 September 2008. According to the Notification, p. 223, […]*. According to the web-site, Qstar acquired 200 stations from Bilisten on 28 July 2008.

43 […]* "ICA Tapp"-stations are supplied by […]*. Notification, p.225.

(and other small operators) accounted for approximately [0-5]*% of retail motor fuel sales in 2007.

Market entry

(72) No particular licences are needed to operate fuel stations in Sweden. Patents, know-how and intellectual property rights (except those pertaining to brands) do not play a significant role in the industry. Refined petroleum products are highly standardised commodities widely traded all over the world. According to SH, Swedish refineries have surplus production currently being exported, which means that they may be expected to be interested in selling fuel to a company entering the Swedish market.[44]

(73) The availability of suitable sites on which to build fuel stations and the possibility to obtain the necessary permits (for example planning permits, environmental licences) are crucial factors when assessing barriers to entry (and barriers to expansion). The cost of entry is likely to be substantial if the market entrant decides to build a network of fuel stations from "scratch". Such entry involves acquiring (or renting) new sites, building forecourts, installing pumps and tanks, negotiating fuel supplies and creating a new brand by investing in promotion and advertising. The cost and time needed for such "green-field entry" must be regarded as substantial. Another noteworthy barrier is that the number of fuel stations per capita in Sweden is higher than in most other Member States and the fact that the average annual throughput per station in Sweden (1 800 m3) is much lower than the Community average (2 400 m3).

(74) However, entry costs are likely to be much lower if the market entrant acquires an existing fuel station network including an established brand or if the acquirer is an established oil company already in possession of a recognised brand.

(75) The only example of *de novo* entry in recent years relates to St1, which opened its first fuel station in Sweden in 2004. St1 is a subsidiary of the Finnish company St1 Oy which operates more than 400 fuel stations in Finland (after acquiring the Finnish "Esso" network). Since entering the Swedish market St1 has expanded its network. However this expansion has been at a moderate pace, especially if compared with the large number of stations operated by the Parties in Sweden. The St1 network currently includes 41 stations, compared to 34 in 2006.

(76) Even bearing in mind the entry of St1, it must be concluded that barriers to entry – especially "green-field entry" – to the Swedish market for retail sales of motor fuels are considerable.

(77) Whilst the Parties have referred to the success of JET as indicating that the costs of building and maintaining a network of automated fuel stations are not prohibitive, there is no example of any other service-station chain being close to JET in terms of number of stations, throughput and profitability.

---

[44] Notification, p.264.

Pricing

(78) In general, the retail suppliers of motor fuels in Sweden determine retail prices charged by company-operated full-service stations and automated stations while franchisees and independent dealers are free to set their own retail prices.

(79) The suppliers set list prices which are published on the companies' respective web-sites. List prices are changed frequently, at least twice a week. In most cases, the rebates that are offered are set at national level.

(80) At the local level, each station manager is responsible for the prices charged at his station ("pump prices"). Pump prices are changed frequently - often several times per day – to reflect local competition. For each station, a set of neighbouring stations ("clusters") is determined whose prices are frequently monitored.

(81) The prices charged by individual stations thus reflect both general pricing policies - such as a strategy to maintain a given price differential to competitors in the same cluster - and local pricing policies – for example offering dealers wholesale discounts to support them if local price wars erupt ("price support").

Market developments

(82) The following main trends currently reshaping the competitive landscape in the Swedish market may be discerned.

Growing importance of automated fuel stations

(83) The number of full-service stations is declining and the number of automated stations is rising. More than half of all fuel stations are currently automated and SH expects this trend to continue. The growing emphasis on automated fuel stations has caused [some players]* to reconsider the strategy of charging higher fuel prices at full-service stations accompanied by volume-based rebate schemes. Rebates have become less prevalent in the industry and "net pricing" schemes without rebates have become more common.

Network restructuring

(84) Some operators are re-structuring their networks to improve efficiency, for example by closing stations with low throughputs and other efforts to reduce costs. SH and Shell are both currently engaged in restructuring. In the last eight years, Shell has closed or divested approximately 200 stations and re-branded its automated stations as "Shell Express".

Growing importance of renewable fuels

(85) The need to supply additional renewable fuels –for example, E85 and biogas - (voluntarily or as a legal requirement[45]) will require substantial investments. These

[45] In December 2005 the Swedish Parliament adopted a law stipulating that all fuel stations with an annual sales volume exceeding 1 000 m3, must offer alternative fuel (e.g. E85) by 2009. Notification, Annex E-1, p. 2.

investments will, in turn, increase the speed at which fuel station networks are restructured.

A shift from petrol to diesel

(86) Diesel sales are rapidly gaining ground at the expense of petrol. Petrol sales are declining in Sweden. Between 2005 and 2007 petrol sales declined by almost 3%. SH estimates that the diesel volume sold in 2007 was 20% higher than in 2005.[46] Although there are relatively few diesel cars in Sweden, diesel cars accounted for 35% of new cars sold in Sweden in 2007 (compared to 20% in 2006).[47] Following the introduction of a more favourable tax-regime for diesel cars in 2007, diesel sales are expected to continue to grow.

Price wars

(87) SH has submitted that in April 2005 a nation-wide price war concerning petrol broke out as Shell sought to establish its "Shell Express" brand of automated stations by applying the same price differential in relation to full service stations and other automated stations as applied by JET (and some other smaller automated networks). At the time JET applied a differential of SEK 0.25 per litre in relation to full-service stations and SEK 0.08 per litre in relation to most automated networks. The price war was terminated in August 2006, from which time all automated chains applied the same SEK 0.25 differential to full-service stations ("the first price war").

(88) SH further submits that in April 2007, another nation-wide price-war concerning both petrol and diesel started when SH sought to decrease the differential between full-service stations and automated stations from SEK 0.25 per litre to SEK 0.15 per litre. JET and other competitors have resisted SH's initiative by seeking to maintain the SEK 0.25 per litre differential. According to SH this price war is still ongoing ("the second price war").

6.3.2. Unilateral effects

Introduction

(89) The Commission must investigate the extent to which the removal of JET as an independent player in the Swedish market for retail sales of motor fuels and the ensuing strengthening of SH's already strong market position will significantly impede effective competition in this market. At the end of its first phase investigation, the Commission drew the provisional conclusion that the proposed transaction could significantly impede effective competition, *inter alia* in the Swedish market for retail sales of motor fuels. The Commission therefore declared that the proposed transaction raised serious doubts as regards its compatibility with the common market.

(90) The proposed transaction means that the largest supplier in the market with a pre-merger market share of [30-40]*% would strengthen its position further by acquiring

[46] Notification, p. 252.

[47] Source www.bilsweden.se

one of its main competitors, thereby increasing its market share by some [30-40]*% and obtaining a market share of approximately [40-50]*%, more than twice that of its largest competitor (OKQ8, [20-30]*%).

(91) The Commission has made an in-depth assessment of the competitive role played by JET Sweden in the Swedish market in general and more specifically the competitive constraint exerted by JET Sweden on SH's pricing. The Commission has considered whether JET Sweden has played a particular role as a low-price competitor putting downward pressure on prices in Sweden. If JET Sweden has acted as a "pricing maverick" in the Swedish market, the company has played a role in the market which is greater than its market share would imply at first glance.

<u>JET's market behaviour and influence on competition</u>

(92) SH maintains that JET Sweden does not play a significant role for competition in the Swedish market for retail sales of motor fuels. According to SH, JET Sweden applies a "price follower" strategy, simply applying the same differential of SEK 0.25 per litre vis-à-vis the full service stations. Since JET Sweden only changes its prices in reaction to the price decisions of other market players, the company does not exert a significant price constraint on SH or any of the other major market players. Moreover, SH emphasises the fact that JET Sweden is not the largest of the automated networks in Sweden, only accounting for 163 of a total number of 1 970 automated stations. SH claims that JET Sweden did not start any of the recent national price wars and that JET Sweden is not alone in resisting SH's endeavours to reduce the current differential between full-service and automated stations. According to SH, Statoil and JET Sweden are not each other's closest competitors. SH maintains that JET Sweden's closest competitors are […]* and SH has submitted an econometric study purporting to show that […]* have a similar impact to JET Sweden on Statoil's prices.[48] SH concludes that JET Sweden charges essentially the same prices as competing automated networks. However, SH admits that JET Sweden's prices were slightly lower than its competitors' during the two price wars but concludes that price differences were insignificant and did not take rebates into account.[49]

(93) That view cannot be accepted. Contrary to SH's claims, a number of circumstances indicate that JET Sweden plays a unique role in the Swedish market for retail sales of motor fuels and that the removal of JET as an independent player would hamper competition. These circumstances are described in recitals 94-101 below.

(94) JET Sweden opened its first fuel station in Sweden in 1978. Since then, JET Sweden has continuously expanded its network of automated fuel stations. All 163 JET Sweden stations are company-owned and company-operated ("COCO"). JET Sweden's fuel stations have prime locations in densely populated parts of Sweden. Since entering the market, JET Sweden has consistently applied the same strategy by

---

48 "Assessment of Unilateral Effects Concerns in Sweden", PP-presentation by RBB Economics, November 2007 and "Statoil/JET: Update of Analysis on Impact of Nearest Competitor on Statoil's Prices in Sweden, paper by RBB Economics, 28 February 2008.

49 Notification, p. 190.

charging "net prices" (no rebate schemes) as advertised on the pump. The company applies a price differential to competing full-service station networks of, currently, SEK 0.25 per litre and has a long history of defending the differential if challenged by competitors. JET Sweden was the first company that operated a purely automated fuel station network in Sweden. JET Sweden's strategy has been highly successful. The company is a focussed low-cost operator whose market share and importance in the market is far greater than the company's relatively modest number of outlets (163) would indicate at first glance. JET Sweden operates only 4.5% of all fuel stations in Sweden but has a market share exceeding [10-20]*% and growing annually. JET is the most efficient operator in the Swedish market with an average throughput per station which is far higher than its competitors' (JET Sweden's average throughput was [4,000-5,000]* m3 in 2007 as compared to an average of 1 800 m3 per station for all Swedish outlets).

(95) The concept originally developed by JET Sweden has been so successful that competitors have created their own brands (or "sub-brands" such as SH's "1-2-3" and Shell's "Shell Express") for competing automated fuel station networks applying "net pricing" schemes. JET Sweden's presence has transformed the Swedish market by making it less reliant on full-service stations and complex rebate schemes.

(96) In order to gauge Swedish consumers' perceptions of JET Sweden, the Commission has carried out a consumer survey.[50] The survey indicates that JET is generally perceived as a low-price supplier. 47% of respondents stated that JET Sweden charged lower prices than its competitors, whereas 2% stated that JET Sweden sometimes charged higher prices.[51] If competitors' rebates are taken into account, 34% percent of respondents still considered that JET Sweden's prices were lower.[52] In addition, almost half the consumers surveyed considered that SH's acquisition of JET Sweden and the disappearance of the JET brand would diminish competition in the Swedish market for retail sales of motor fuels.[53] The survey confirms that the JET brand is strong in the Swedish market.

---

[50] The survey was conducted by Sifo Research International AB ("Sifo") and consisted of telephone interviews with 1250 Swedish consumers. The interviews were made 17-23 June 2008.

[51] 27% of respondents stated that JET always charges lower prices, 20% that JET sometimes charges lower prices, 2% stated that JET sometimes charges higher prices and 0% stated that JET always charges higher prices. 19% of respondents considered that JET's prices are "about the same" as its competitors'. 32% of respondents were hesitant or did not know. Sifo survey, question 11, p. 11.

[52] 21% of respondents stated that JET always charges lower prices, 13% that JET sometimes charges lower prices, 2% stated that JET sometimes charges higher prices and 0% stated that JET always charges higher prices. 18% of respondents considered that JET's prices are "about the same" as its competitors'. 44% of respondents were hesitant or did not know. Sifo survey, question 12, p. 11.

[53] 45% of respondents stated that Statoil acquiring JET would diminish competition, 32% stated that it would have little or no impact on competition, 13% stated that it would increase competition and 10% of respondents were hesitant or did not know. Sifo survey, question 13, p. 12.

(97) SH concedes that Swedish consumers *perceive* JET Sweden as a low price competitor, but claim that in practice JET Sweden does not charge lower prices than other automated networks. In SH's view, JET Sweden is merely a "price follower."[54]

(98) For several reasons, SH's characterisation of JET Sweden as a "price follower" is erroneous. First, JET Sweden does not accept a given market price but systematically undercuts it. The fact that JET Sweden's undercutting is repeated and therefore predictable does not mean that JET Sweden is a mere "price follower" (a "price follower" is a company that simply accepts a price level set by someone else). JET Sweden's chosen differential has also varied over time and competing networks must consider that it may be ready to increase the differential should they attempt to impose price increases that are not warranted by their cost situation. In any case, by applying the SEK 0.25 per litre differential in relation to competing full-service station networks, JET Sweden has established a low-price benchmark for automated fuel stations, thereby creating its own market segment. The fact that several competitors have recently (since the first price-war) started to apply the same SEK 0.25 per litre price differential as JET Sweden does not make the company a "price follower" because JET Sweden still systematically undercuts competing full-service networks.

(99) Moreover, given the fact that JET Sweden is the most efficient supplier in the market (a low-cost operation with the highest average throughput), JET Sweden has the best ability to defend the price differential it has established. It must therefore be concluded that JET Sweden exerts a stronger constraint on its competitors' prices than weaker rivals that also apply the SEK 0.25 per litre price differential. As a consequence of the proposed transaction, the long-established leader of the low price segment would disappear from the market. The disappearance of JET Sweden would change the remaining competitors' incentive structures and it cannot be concluded with any certainty that price differentials, such as those applied by JET, would continue in its absence after the merger.

(100) The Commission's market investigation indicates that JET Sweden and the Statoil network exert the greatest influence on retail motor fuel prices in Sweden. Several respondents to the market investigation emphasised the fact that fierce competition between the Statoil network, JET Sweden and Shell have decreased the margins and eroded the profitability of smaller and weaker networks. Furthermore, the market investigation indicated that smaller competitors such as the Tanka and St1 networks of automated fuel stations are too small to influence price levels in a manner similar to JET Sweden.

(101) The market investigation demonstrates that SH considers JET Sweden as its most important competitive constraint. Internal SH documents confirm that JET has a very strong brand image and that consumers perceive JET Sweden as the cheapest supplier […]. Moreover, internal SH documents show that the company regards JET Sweden as its most efficient competitor. According to these documents, SH has therefore adopted the strategy […]*.[55] For these reasons, the removal of JET Sweden

[54] Notification, p. 216.

[55] See PP-presentation "Strategidagen", internal Statoil document dated 10 April 2007. In this document Statoil states that […]*.

as an independent competitor and its merger with the largest operator in Sweden raises serious doubts about the compatibility of the proposed concentration with the common market.

<u>JET Sweden's impact on the Statoil network's pricing</u>

(102) The Commission performed an econometric analysis to further gauge the impact of JET Sweden's presence in the same clusters as Statoil fuel stations. The analysis, which supports the conclusion reached in the previous recital, is summarised in recitals 103-115 below.

(103) The econometric analysis is based on three main data sources: (i) daily prices of diesel and 95 octane petrol ("petrol 95") from January 2004 to May 2008 at Statoil fuel stations, (ii) characteristics of Statoil fuel stations and (iii) Statoil's cluster definitions which allowed the Commission to identify all competing stations for each Statoil fuel station.[56] These data sources were combined to create a single data set that was used for the regression analyses.

(104) The regression analyses use log of Statoil's prices for diesel and petrol 95 as "dependent variables", because both variables may be expected to be negatively affected by a greater degree of competition from JET Sweden or any other competitor of Statoil. To explain the variation in the log of Statoil's prices, competition and control factors were included in the regressions as "explanatory variables". The role of the competition variables is to capture JET Sweden's presence as well as the presence of all other competitors of Statoil in each of Statoil's clusters. The role of the control variables (such as average population density) is to capture all other effects that are unrelated to the level of competition. Including both types of explanatory variables in the regressions therefore ensures that the role of competition and the characteristics of Statoil's clusters are properly captured and, in particular, the effect of JET Sweden or any other competitor on Statoil is neither overestimated, nor underestimated.

(105) During the first-phase investigation, the Commission ran daily cross-sectional regressions for diesel and petrol 95 fuel using ordinary least squares (OLS) with robust standard errors.[57] Control variables in each model included (i) the total number of stations in each Statoil cluster, (ii) the number of unmanned stations in each Statoil cluster, and (iii) the average population density of the municipality in which each Statoil station is located. JET Sweden's presence (that is to say the competition variable) was modelled using a dummy variable that equals 1 if at least one JET Sweden station was located in Statoil's cluster and 0 otherwise. The models

---

56 The Commission also collected similar data for the Hydro network that is currently owned by Statoil. However, this data was not of a sufficient quality to perform any sophisticated econometric analysis that would gauge the effect of JET Sweden on the Hydro network.

57 One of the basic assumptions of the OLS estimator is that the error term in the regression has constant variance. As this assumption appeared to be violated when the analysis was carried out using a simple OLS estimator, an OLS estimator with robust standard errors was used instead, since it corrects for this shortcoming.

were estimated separately for the periods without price wars and periods with price wars from January 2004 to December 2007.[58]

(106) The results suggest that the presence of JET Sweden in Statoil's clusters constrains the prices charged by Statoil. The constraint is particularly strong during price wars. For example, during the second price war Statoil's diesel pump prices[59] at full-service stations were on average [5-10]*% lower and diesel pump prices at Statoil's automated stations were [5-10]*% lower when JET Sweden was present in Statoil's clusters.[60] The analysis showed similar but smaller effects for petrol 95 during both price wars.

(107) SH has stated that smaller competitors - such as […]* – influence fuel prices in a manner similar to JET Sweden. In order to test this hypothesis, the Commission devised a second model that made it possible to distinguish between the effect of JET Sweden and the effect of […]* on Statoil's prices. This regression analysis contained three dummy variables indicating whether (i) at least one JET Sweden station and no […]* station was present in Statoil's cluster, (ii) at least one JET Sweden and at least one […]* station was present, or (iii) at least one […]* and no JET Sweden station was present. The results indicate that the effect of […]* presence in Statoil's clusters was of a lesser magnitude than JET Sweden's.

(108) During the second-phase investigation, the Commission has further refined its economic modelling in response to arguments put forward by the Parties. Moreover, the Commission has thoroughly tested the robustness of its findings. These refinements and robustness checks are described in recitals 109-115 below.

(109) In its response to a request for information from the Commission, SH has "deleted some incorrect prices in Sweden for 2004 and 2005. These incorrect prices were caused by Statoil's point-of sales system used at the time, which was gradually phased out in 2004 and 2005."[61] After further clarification, it became clear that these data errors affected the pricing data of a large number of stations until May 2005. The Commission therefore limited its data set to the period from 1 June 2005 onwards. Moreover, SH had extended the data set to the end of May 2008. Consequently, the regression analysis for petrol 95 was carried out for three periods, namely (i) the first price war (June 2005 to August 2006), (ii) the period in-between price wars (September 2006 to April 2007), and (iii) the second price war (May 2007 to May 2008). Since the first price war period only concerned petrol, the diesel regressions were only performed for two periods: (i) the period prior to the price war (June 2005 to April 2007), and (ii) the price war period (May 2007 to May 2008).

---

[58] The data set obtained during the first-phase investigation ended in December 2007. The data set was extended to May 2008 during the second-phase investigation.

[59] Pump prices include taxes, i.e. notably excise duties and value added tax.

[60] These figures measure the average effect of JET Sweden's presence on Statoil's prices during the second price war and takes into account both significant and insignificant coefficients.

[61] SH reply of 27 June 2008 to Commission information request, p. 3.

(110) Rather than running a large number of daily cross-sectional regressions, the data was pooled for each of the periods.[62] As a result, the coefficients on JET Sweden can be directly interpreted as the average competitive effect of JET Sweden on Statoil over the whole period. In addition, rather than running the regression at daily levels, the data was aggregated to monthly levels. This aggregation was made because SH had stated that […]*[63] This would, however, imply that many Statoil stations may face a different competitive constraint exerted by competing stations on a daily basis, which does not seem reasonable. It thus seems sensible to aggregate the data to monthly levels to limit the effects of this data variation.[64] In addition, during its second-phase investigation, the Commission pooled the data across full-service and automated fuel stations.[65]

(111) In terms of the functional form of the regressions, pooling allows for introduction of additional variables that capture price movements over time. The Rotterdam index prices for diesel and petrol 95 were therefore introduced into the regressions. In response to arguments put forward by SH, additional variables were included in the regressions. First, to allow for the presence of competitors other than JET Sweden in Statoil's clusters, the Commission used Statoil's pricing tool, and included specific dummies for the full-service stations of OKQ8, Preem and Shell [and JET Sweden's and Tanka's stations]*. […]*, all other stations were assumed to be automated and an additional dummy that captured the presence of these stations was included in the regressions. To correct for differences in operating costs across clusters, transport costs from Statoil fuel depots to Statoil fuel stations were included in the regressions.[66] Finally, a dummy indicating whether the Statoil station is full-service or automated was included in the regressions.

(112) Moreover, the estimation algorithm was enhanced by using "robust regressions" rather than OLS with robust standard errors to eliminate outliers and improve the regression fit, as additional testing suggested that in addition to the heteroscedastic errors (that were corrected by using OLS with robust errors), the Ramsey regression specification error test suggested that there may have been some misspecification problems such as omitted variable bias.[67]

---

62 In practice, this meant that, for example, rather than running 458 daily cross-section regressions for the first price war period, only a single regression was performed instead with all days being pooled together.

63 SH reply of 27 June 2008 to Commission information request, p. 5.

64 RBB Economics has also noted that serial correlation in the data persists for around 30 days; RBB presentation "Economic Issues Raised by the StatoilHydro/JET Transaction in Sweden", slide 44.

65 Pooling data across full-service and automated stations seems to be consistent with the regression methods applied by SH.

66 Moreover, a small number of motorway stations were excluded from the analysis following the suggestion by SH that the Commission regressions were omitting key variables such as the location on (or near to) a motorway.

67 Essentially, the "robust regression" technique uses a pre-set computational algorithm to determine how much weight should be put on each observation in the data, ensuring that gross outliers are eliminated from the regressions, while other observations receive less weight when estimating the underlying regression parameters.

(113) To further check the robustness of the Commission's results, two additional models were estimated. In the first model, rather than using Statoil's pump prices, deviations of Statoil's pump prices from Statoil's nationally recommended prices were used to capture and model specifically the local competitive conditions.[68] In the second model, rather then modelling the competition variables with a number of identity dummies for competitors, they were modelled as a set of dummies that indicated the number of competitors in each Statoil cluster. This dummy set was interacted further with the presence of JET Sweden. The dummies that identified the number of competitors in each cluster may serve as a proxy for the intensity of competition in each cluster. When these dummies are interacted with the presence of JET Sweden, these coefficients capture the incremental intensity of competition intensity that may be attributed to JET Sweden specifically.

(114) The results of the base model, in which prices are regressed on the identities of the competitors, imply that Statoil's petrol prices were lower in all three periods when JET Sweden was present in Statoil's clusters as opposed to when JET Sweden was not present. Specifically, Statoil's petrol prices were [0-5]*% lower during the first price war, [0-5]*% lower during the period in-between price wars and [0-5]*% lower during the second price war. Moreover, of all the competitors included in the regressions, JET Sweden was the only competitor whose effect on Statoil was negative and statistically significant for all three time periods. As regards diesel, the Commission regression analysis indicates that the prices charged by Statoil prior to the price war were [0-5]*% lower when JET Sweden was present in the same Statoil cluster and [0-5]*% lower during the price war. The findings were broadly similar for the two alternative models estimated by the Commission.

(115) SH has suggested that the identities of additional competitors such as St1 or Shell Express should be introduced in the models described in recitals 102-114 above. When the Commission re-ran the regression analysis including these additional identities, the results remained essentially unchanged with the exception of petrol 95 during the first price war, where the JET Sweden coefficient decreased by half. Additional testing revealed that this decrease was predominantly caused by the inclusion of a dummy for Shell Express. This implies that there was interaction between the pricing behaviour of Shell Express stations and JET Sweden stations during the first price war. Therefore, some of the effect of the Shell Express stations captures the JET Sweden effect. Overall, however, additions of other competitors have not had any significant effect on the Commission's findings.

(116) SH has provided two descriptive analyses assessing the competitive constraint exercised by JET Sweden.[69] These analyses included (i) an assessment of JET Sweden's pricing in relation to other automated networks on the basis of Statoil clusters and areas defined by overlapping 5 minute isochrones, and (ii) an assessment of whether Statoil's prices are systematically lower when JET Sweden is the nearest station (in terms of drive time). The results from the first analysis suggest that (i)

---

[68] SH publishes a national recommended list price from which the dealers are free to charge either higher or lower pump prices according to the local competitive conditions.

[69] "Economic Issues Raised by the StatoilHydro/JET Transaction in Sweden", PP-presentation by RBB Economics.

JET Sweden's prices are on average aligned with other automated networks and (ii) diesel prices were aligned with rivals before the start of the second price war but have been slightly cheaper during the second price war. The results from the second analysis imply that (i) Statoil's petrol prices are not systematically lower when JET Sweden is the nearest competitor and (ii) Statoil's diesel prices are lower only during the price war.

(117) Neither the first, nor the second of SH's analyses can be accepted. The regression analyses are more appropriate for several reasons. Firstly, SH's descriptive analyses only examine average patterns and do not, for example, take into account cluster characteristics or the cluster composition in terms of competitors. Secondly, it is inconsistent to criticise the regression analysis performed by the Commission in its first-phase investigation for omitting certain key variables[70] and then provide descriptive analyses that also omit key variables. Thirdly, the Commission has discovered many instances where two fuel stations owned by different networks are located next to each other but the descriptive analysis based on the nearest competitor takes into account only the nearest station. This omission may distort significantly the outcome of the analysis. For example, for 25% of Statoil's stations, the second closest competitor is located 28 seconds of driving time or less from the closest competitor. For 50% of Statoil’s stations, the second closest competitor is within 1 minute and 23 seconds of driving time from the closest competitor.

(118) In addition, SH has put forward an alternative regression model, in which the daily prices of each Statoil station are regressed on the shortest distance from that particular Statoil station to each competitor that Statoil faces. According to SH, this model isolates the impact of individual competitor on Statoil's prices while taking into account driving time from each Statoil station to each competitor's closest station. For diesel, SH considers that the distance from JET Sweden has a statistically significant and positive impact on Statoil's prices for, at most, [5-10]*% of the days before the second price war and [90-100]*% of the days during the second price war. SH considers that the magnitude of the average JET Sweden coefficient is economically insignificant before the second price war, both in absolute terms and relative to the other competitors. For petrol 95, SH considers that the distance from JET Sweden has a statistically significant and positive impact on Statoil's prices on, at most, [40-50]*% of the days during the first price war, [20-30]*% of the days during the inter-war period and [90-100]*% of the days during the second price war. SH considers that the magnitude of the average JET Sweden coefficient is economically insignificant before the second price war period, both in absolute terms and relative to the other competitors.

(119) Those results cannot be accepted, because the underlying regressions are inappropriate. In particular, the construction of SH's data set implies that […]* of the “nearest” competitors for certain Statoil stations are more than […]* driving time away and therefore the presence of competitors measured by distance is subject to very large variations.[71] This is unreasonable, since the average driving time in

70 "Economic Issues Raised by the StatoilHydro/JET Transaction in Sweden", PP-presentation by RBB Economics, slide 19.

71 This appears to be one of the reasons why SH regresses Statoil's prices on the log of the distances rather than the distances in levels, as it smoothes out the variation in the data.

Statoil's own clusters is approximately […]* minutes. The large variation in the presence variable (due to the large variation in distances) makes the estimated coefficients economically meaningless because a station manager may not realistically be expected to determine his prices based on the prices charged by competitors located hours away, and additionally it also decreases the statistical significance of the different presence coefficients.

6.3.3. Unilateral effects - conclusion

(120) Considering in particular JET Sweden's position as the most efficient low-cost operator in the Swedish market with a very strong brand and a proven track record of undercutting competitors' prices as well as the fact that JET Sweden's presence in Statoil's clusters puts a particular constraint on Statoil's pricing, it is concluded that the removal of JET Sweden as an independent competitor and its merger with the largest operator in Sweden raise serious doubts about the compatibility of the proposed transaction with the common market.

6.4. Retail sales of motor fuels in Norway

6.4.1. Market conditions

Supply and demand structure

(121) Sales of petrol in Norway have been declining over the past few years. Between 2005 and 2007, the volumes sold declined by 8.8%. The increasing switch from vehicles equipped with petrol engines to vehicles equipped with diesel engines or alternative fuel engines caused the decline. Conversely, demand for diesel fuel is expanding.

(122) The volume of diesel sold increased between 2005 and 2007 by 29.3%.[72] Diesel now accounts for 46% of retail motor fuels sales volumes and is a growing segment.

(123) Motor fuel demand in Norway is concentrated in the south where the key inland oil terminals are supplied by rail from the two main fuel refineries of Mongstad, owned by Statoil (stake of 79%) and Shell (stake of 21%), and Slagen, owned by Esso. Mongstad is by far the biggest refinery in Norway and represents about 64% of the Norwegian refining capacity.

(124) Norway has significant surplus refining production, with the Mongstad unit alone having a capacity corresponding to 130% of Norwegian demand. This makes Norway a relatively large product exporter. The majority of exports are destined for the other Scandinavian and north-western European markets, as well as North America.

(125) The two Norwegian refineries also deliver directly to their immediate hinterlands by road. For areas north of the main refining centres the bulk of demand is supplied by road from coastal terminals.

---

[72] Source: Notification.

(126) Although Norway has surplus refining production some motor fuel volumes are also imported from refineries located outside Norway. […]*.

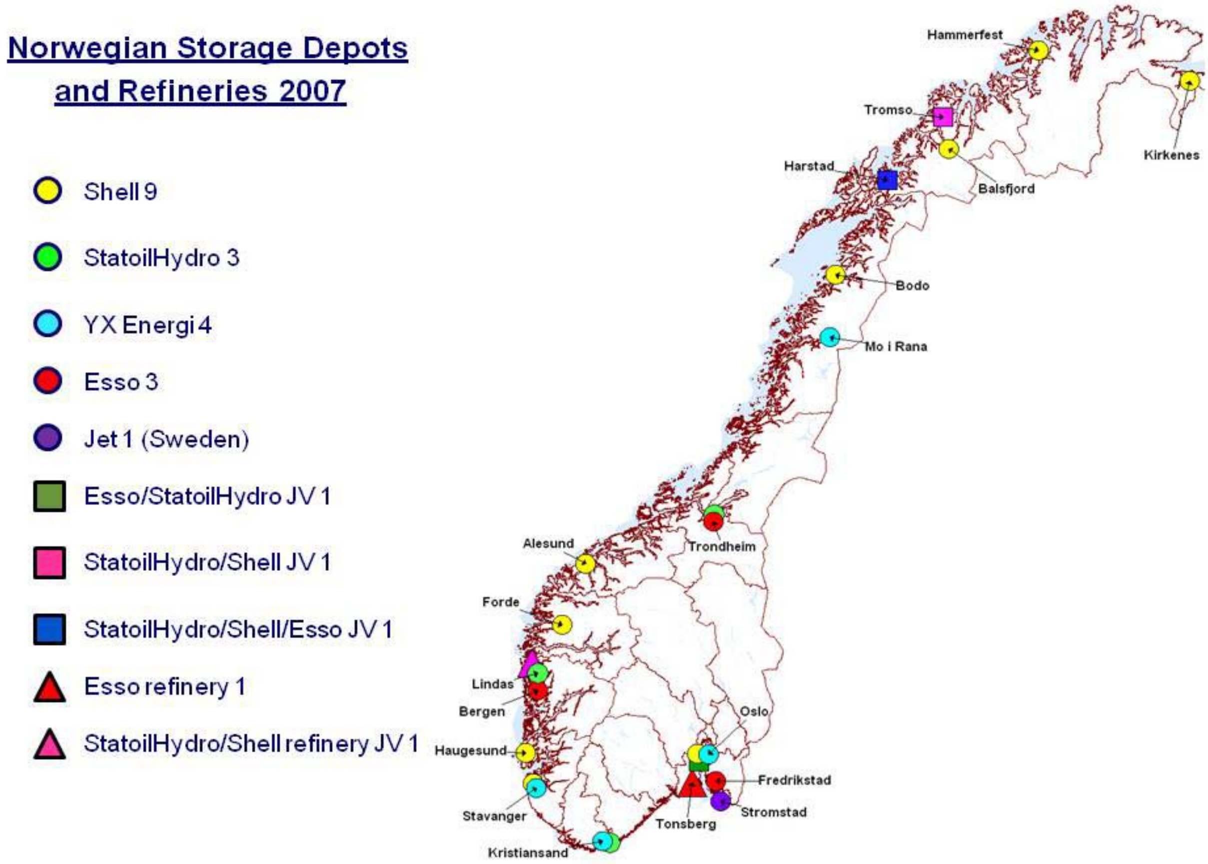
Depots

(127) In Norway, there are 22 depots, which are all owned and operated by the four main motor fuel retailers. Nine depots are operated by Shell, three by Esso, four by YX Energi, three by SH, one jointly by SH and Shell, one jointly by SH and Esso, and one jointly by SH, Shell and Esso.

(128) Unlike the other four retailers, JET Norway has no storage depots or terminals in Norway. However, JET Sweden operates a depot in Strömstad, Sweden which is located close to the Norwegian border. This depot is […]* used to supply fuel to JET Norway. [Some volume is also taken from Esso's refinery in Slagen]*.

(129) Map 1 below includes depots and refineries in Norway:

Map 1



(130) In Norway, the four incumbents (SH, Shell, Esso, YX Energi) have granted each other access to each other's depots, in order to limit fuel delivery costs throughout the territory. These four players have therefore made contractual arrangements to obtain storage capacity from each other. These arrangements are generally eitherthroughput agreements[73], exchange agreements[74] or sales agreements[75].

(131) SH has concluded throughput agreements with […]* as well as an exchange agreement with […]*. About […]*% of SH's retail sales of fuel are achieved thanks to these agreements.

---

[73] Throughput agreements are arrangements whereby one supplier supplies product to another supplier’s depot, while remaining the owner of the product. The supplier pays the depot owner a fee for using his facility for quay access, product storage and loading trucks.

[74] Exchange agreements are arrangements whereby one supplier is able to pick up product from another supplier’s refinery or depot in return for offering the other supplier the ability to pick up product elsewhere. The volumes drawn at the two depots are the same, and the parties do not pay for the products, but pay a fee for using each other’s storage and truck loading facilities.

[75] Sales agreements are arrangements whereby one supplier will take products from the storage depot of another supplier against payment. The products drawn at the depots are owned by the depot owner (or another supplier with a throughput agreement with the depot owner) and title passes at the loading rack, when the truck is loaded.

(132) JET Norway has been unable to conclude such agreements with the four incumbents. In this context, JET Norway has lodged two complaints against the four incumbents' refusal to enter into withdrawal agreements with JET Norway and to allow JET Norway access to their depots.

(133) In 1997, JET Norway lodged a complaint with the Norwegian competition authority (NCA) alleging that the incumbents refused to supply petrol or give access to storage facilities. Although the NCA found that the incumbents had refused to deal with JET Norway, it concluded that there were insufficient reasons to intervene.

(134) In 2002, JET Norway lodged a complaint before the EFTA surveillance authority (ESA) against the refusal of the four incumbents to enter into withdrawal agreements with JET Norway and to allow JET Norway access to their depots. In its complaint, JET Norway claimed that this refusal infringed Articles 53 and 54 of the EEA Agreement.[76] In 2005, the ESA wrote a letter to JET Norway informing it that there were insufficient grounds for ESA to act upon the complaint. In view of the position of the ESA, JET Norway withdrew its complaint and ESA never adopted a formal decision in the case.

Fuel station networks

(135) Since JET Norway's entry in 1992, the Norwegian market for retail sales of motor fuel has undergone further rationalisation and consolidation. In 1992 there were 2 924 stations and six main networks (Esso, Fina, Hydro, Shell, Statoil, Texaco).[77] At the end of 2007 there were 1 906 stations and only four main networks in addition to JET Norway, namely SH, Shell, Esso and YX[78].

(136) Three of the incumbents, SH, Shell and Esso, are vertically integrated in Scandinavia since they operate refineries in this geographic area.[79]

---

[76] Article 53 EEA prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between contracting parties and which have their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA agreement. Article 54 EEA provides that "any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties (…)".

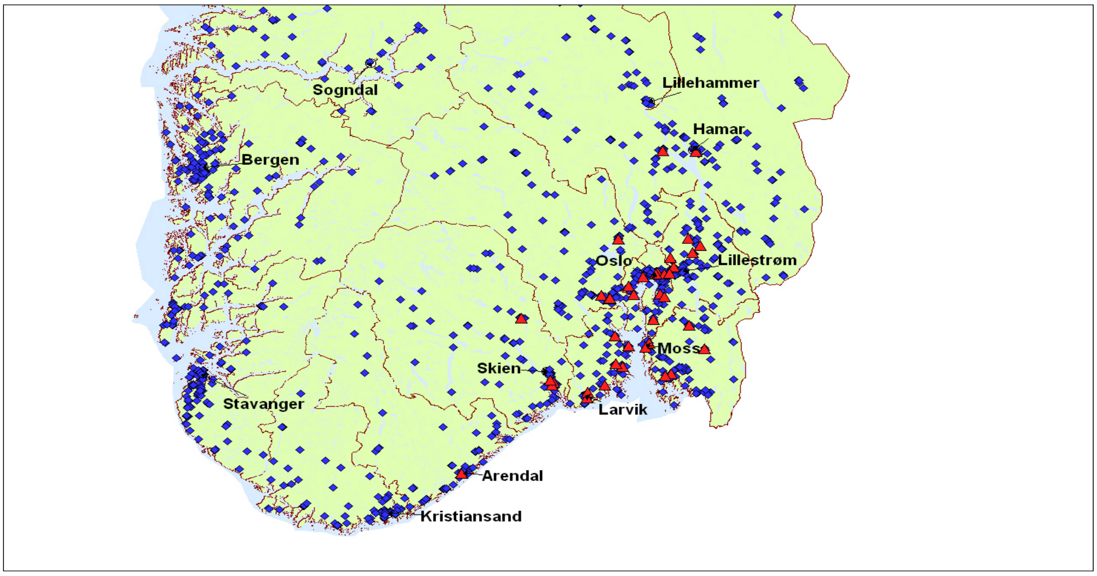
[77] Leaving out very small players representing together a total of about 50 stations. Source: Norwegian Petroleum Institute.

[78] In October 2006, the Norwegian retail company, Reitan Servicehandel AS, acquired the petrol retailing and energy business of Hydro Texaco (a joint venture owned 50% by Norsk Hydro AS and 50% by Chevron) in Denmark and Norway and has rebranded it as YX Energi.

[79] StatoilHydro has one refinery in Denmark and one in Sweden; Shell has one refinery in Denmark, one in Sweden and a stake in one refinery in Norway; Esso (Exxon) has one refinery in Norway. ConocoPhillips group, which owns JET Scandinavia, is also vertically integrated but its refineries are located outside Scandinavia, notably in the UK and Germany. JET Norway does not source its fuel from ConocoPhillips' refineries.

(137) Unlike in Sweden, automated stations do not play an important role in the Norwegian market. Only 17% of fuel stations in Norway were automated in 2007 and JET Norway operates the only entirely automated network.[80]

(138) JET Norway is the smallest supplier of retail motor fuels in Norway, with [0-5]*% market share by volume and 2.2% by number of stations in 2007. JET Norway operates 39 stations. JET Norway's stations are located in certain urban areas in the south-eastern part of Norway as set out on map 2 below:



Map 2 - South Norway - JET Norway's stations are in red, all the other stations are in blue.
Source: assessment of unilateral and coordinated effects concerns in Norway (RBB Economics – 10 December 2007).

Pricing

(139) In general, the retail suppliers of motor fuels in Norway determine retail prices charged by company-operated full-service stations and automated stations while franchisees and independent dealers are free to set their own retail prices.

(140) Some suppliers (like SH or Shell) set list prices which are published on the companies' respective web-sites.[81] List prices are changed frequently, at least twice a week. In most cases, the rebates that are offered are set at national level.

(141) At the local level, each station operator is responsible for the prices charged at his station ("pump prices"). Such pump prices are changed frequently - often several times per day – to reflect local competition. For each station, a set of neighbouring stations ("clusters") is determined whose prices are frequently monitored.

(142) The prices charged by individual stations thus reflect both general pricing policies - such as a strategy to maintain a given price differential to competitors in the same

[80] YX' network is the most unmanned (29.4%), followed by Shell's (14.1%), StatoilHydro's (13.1%) and Esso's (1.6%).

[81] JET Norway does not publish list prices on its web-site.

cluster - and local pricing policies – for example offering dealers wholesale discounts to support them if local price wars erupt ("price support").

<u>Market entry</u>

(143) SH considers that an undertaking wishing to enter the Norwegian retail motor fuels market could do so by acquiring stations which have become available through network restructuring or construction of automated stations.

(144) Since JET Norway's entry, nobody has entered the Norwegian market for retail sales of motor fuels.[82]

(145) Moreover, SH acknowledges that entering the market by building a new network involves substantial costs: *"total costs could be substantial if a new entrant decides to build a new network of full-service stations, as such an entry requires to acquire or rent sites, as well as to build forecourts and stores, to negotiate and secure fuel supplies and to create a brand that involves promotion and advertising."*[83]

(146) The logistical constraints, in particular access to depots as described in recitals 132-134 above, indicate that barriers to entry are high in Norway.

(147) […]*.

(148) […]*.[84]

(149) In a presentation made […]*,[a market participant]* made the following statement as regards the Norwegian market for retail sales of motor fuel: *"High barriers to entry for new competitors, logistically difficult, oligopolistic market."*[85]

(150) Based on the elements described in recitals 143-149 above, it is concluded that the barriers to entry to the Norwegian market for retail sales of motor fuels are high.

6.4.2. Unilateral effects

(151) The Commission must investigate the extent to which the removal of JET as an independent player in the Norwegian market for retail sales of motor fuels will significantly impede effective competition in that market. At the end of its first phase investigation, the Commission drew the provisional conclusion that the proposed transaction could significantly impede effective competition, *inter alia* in the Norwegian market for retail sales of motor fuels. The Commission therefore declared that the proposed transaction raised serious doubts as regards its compatibility with the common market and the EEA agreement.

---

82 The acquisition of the Hydro Texaco network (rebranded XY Energi) by Reitan Servicehandel AS in October 2006, cannot be considered as a new entry.

83 See paragraph 637 of the Form CO

84 […]*.

85 […]*.

(152) The Parties' and their competitors' sales (in volume) and market shares are set out in table 3 below.

Table 3 - Retail sales of motor fuels – Norway (incl. petrol and diesel – excluding truck diesel) (in 1000m³)						
Retail Motor Fuels	**2005**		**2006**		**2007**	
	Volume	**%**	**Volume**	**%**	**Volume**	**%**
StatoilHydro	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[30-40]*
Shell	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
Esso	[…]*	[20-30]*	[…]*	[20-30]*	[…]*	[20-30]*
YX Energi	[…]*	[10-20]*	[…]*	[10-20]*	[…]*	[10-20]*
JET Norway	[…]*	[0-5]*	[…]*	[0-5]*	[…]*	[0-5]*
Others	[…]*	[0-5]*	[…]*	[0-5]*	[…]*	[0-5]*
StatoilHydro + JET	[…]*	[30-40]*	[…]*	[30-40]*	[…]*	[30-40]*
Total size of market	[2,500-3,000]*	100.0	[2,500-3,000]*	100.0	[3,000-3,500]*	100.0

Source: Notifcation.

(153) The proposed transaction would reinforce further the oligopolistic structure of the Norwegian market for retail sales of motor fuel. Within this oligopoly, SH would strengthen further its position as the largest provider of motor fuels in Norway, its market share increasing from [30-40]*% to [30-40]*%.

(154) However, the Parties submit that the proposed concentration is unlikely to give rise to competition concerns.

(155) Firstly, they underline that since the increment is limited (about [0-5]*%) and since JET Norway's position has stagnated over the last few years (in terms of both market shares and number of stations), JET Norway does not exert a significant competitive constraint.

(156) Secondly, the Parties claim that JET Norway cannot exert a strong competitive constraint in the market since its Norwegian fuel supply is constrained, with supplies partly coming from the depot in Strömstad, Sweden. […]*.

(157) Thirdly, given JET Norway's constraints, the Parties claim that JET Norway is and can only be a passive price follower. In their view, this conclusion is supported by economic studies showing that JET Norway has a limited impact on the market since

(i) JET Norway has not initiated price decreases but follows the price leaders; (ii) JET Norway's prices are aligned with those of other unmanned competitors; (iii) the opening of new JET stations or the introduction of diesel at existing stations does not have a lasting impact on prices; (iv) in areas where JET Norway is the nearest competitor to Statoil, its impact on Statoil's prices is comparable to that of unmanned stations of its rivals when they are the nearest competitor to a Statoil station; (v) prices in areas where JET Norway is present are generally not lower than prices in comparable areas where JET Norway is not present.[86]

(158) However, that view cannot be accepted. It is concluded – for the reasons set out in recitals 159-194 below - that JET Norway exerts a significant competitive constraint in Norway and that its removal would raise serious doubts as to the compatibility of the proposed merger with the common market and the EEA Agreement.

(a) Within a highly concentrated market, JET Norway's incentives are different from those of the four incumbents

(159) The Norwegian market is highly concentrated, a fact which is acknowledged by the Parties themselves.[87] In addition to SH and JET Norway, there are only three other competitors, namely Shell, Esso and YX Energi.

(160) The market has become even more concentrated since Shell and YX Energi recently entered into an agreement whereby Shell will operate the fuel business and Reitan Servicehandel AS (belonging to Reitangruppen[88], a Norwegian company group owning convenience and grocery stores throughout Scandinavia) will operate the non-fuel business at a large number of YX Energi sites in Norway.[89]

(161) JET Norway's market position is different from those of the other four players in several respects, which gives the company different incentives compared to the other four.

(162) Firstly, JET Norway is the only player which operates a network of purely automated fuel stations in Norway, whereas the four incumbents each have a low proportion of automated stations.

(163) Conversion from full-service to automated outlets in Norway has been slow compared to elsewhere in Scandinavia. Only 17% of fuel stations in Norway are automated compared to over 55% in Sweden and Denmark.

86 Notification, paragraph 395.

87 See paragraph 379 of the Form CO. […]*.

88 www.reitangruppen.no

89 On 4 February 2008 the Norwegian Competition Authority approved the agreement subject to conditions.

(164) Fuel retail margins are very high in Norway, amongst the highest in Europe. Norwegian gross distribution margins were, expressed as a percentage of Community average, 128.9% for petrol and 155.8% for diesel in 2006.[90]. […]*.

(165) The fact that automated stations have lower costs than full-service stations has enabled JET Norway to be aggressive on prices, in particular compared to full-service fuel stations.

(166) Secondly, as mentioned by SH, JET Norway *"has also been very consistent in its branding. All stations are physically rather "simple" and signal cleanness, efficiency and, indirectly, value for money."*[91] JET Norway's retail offer is straightforward and uses a "net pricing" format: all customers pay the price that is displayed at the pump.[92] According to the notifying party, JET Norway's pump net pricing *"gives a strong and attractive signaling to customers"*.[93]

(167) In contrast, the four incumbents operate several types of stations (full-service and automated) under different brands and issue cards which grant various types of rebates to card-holders.

(168) A consumer survey carried out during the Commission's second phase investigation[94] confirms that customers regard the net pricing scheme without rebates as making it easier to compare prices.[95]

(169) Thirdly, the other four market players have all concluded various forms of agreements giving each other access to their respective fuel depots across Norway, whereas JET Norway has not been granted such access.

(170) Furthermore, JET Norway has so far not been allowed to source its fuel from the biggest Norwegian refinery in Mongstad (operated by Statoil and in which Shell has a stake), located in south-west Norway.

(171) These supply constraints explain why JET Norway has not managed to expand its fuel retail activities beyond their current scope in south-east Norway and why JET Norway faces more logistical difficulties than its competitors in south-east Norway.

---

[90] PFC Energy's report for Norway (October 2007 – p. 67).

[91] Notification, paragraph 475.

[92] JET Norway issues a credit card, named "JET card" which can be used by customers to purchase fuel at JET stations across the Scandinavian countries. The "JET card" does not offer any rebates or discounts. This card is a means of deferred payments. According to the data provided by the notifying party, approximately […]*% of all fuel sales of JET Norway are purchased with the "JET card".

[93] Notification, paragraph 474.

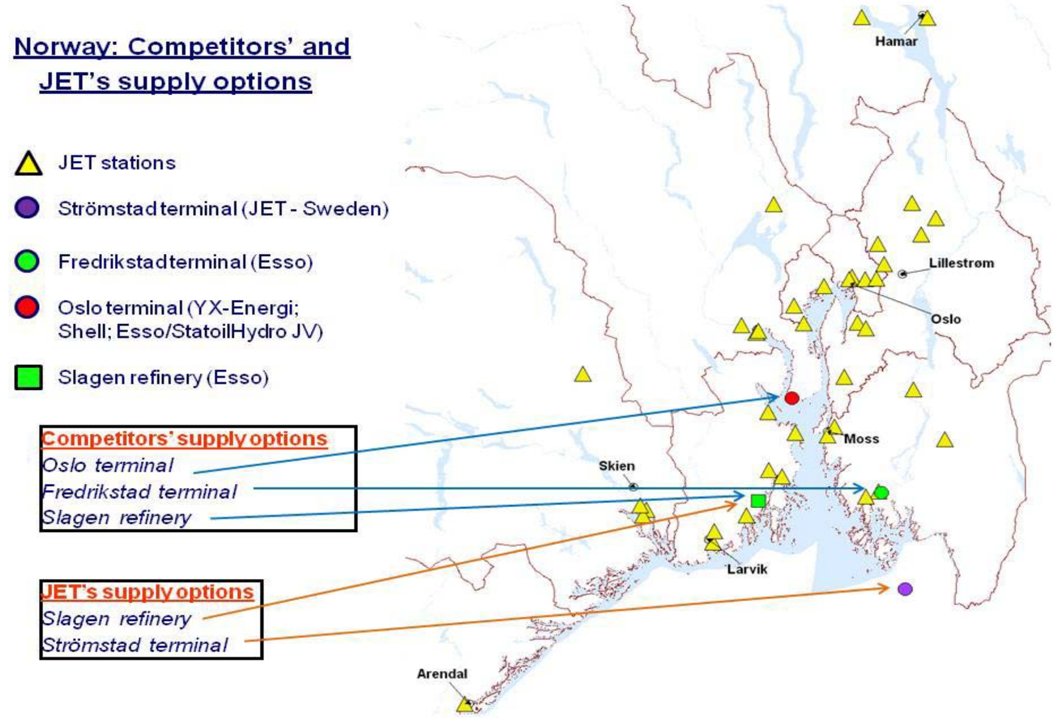
[94] Consumer survey conducted by Opinion AS among a sample of 1001 motor fuels consumers in July 2008.

[95] The question was: to which extent do you consider that a "net pricing scheme" – paying the pump price without rebates – makes it easier to compare prices? 54.3% of the respondents indicated "to a very large extent" or "to a relatively large extent"; 12% indicated "to a very limited extent" or "to a relatively limited extent"; 23% indicated "neither, nor"; 11% did not know or reply.

(172) In 1992-2004 JET Norway had to source its fuel from […]* refinery, located in […]*. Since 2005, JET Norway's logistical situation has improved since it can now source its fuel from Esso's refinery based in Slagen (south-east Norway). […]*.

(173) The current logistical disadvantage of JET Norway with respect to the four incumbents in south east Norway is illustrated on map 3 below.

Map 3



(174) These elements provide an indication that the other market players have different incentives from those of JET Norway, potentially even including a joint interest to prevent JET Norway from expanding, which in turn would appear to indicate that they consider JET Norway as an important competitive constraint in terms of prices.

(b) JET Norway constrains the competitive behaviour of its rivals in a market with high barriers to entry

(175) Based on the elements described in recitals 159-174 above, it appears that the role played by JET Norway is of significantly greater importance than is immediately apparent from looking at the company's modest market share.

(176) There are several elements which indicate that JET Norway exerts a strong competitive constraint in the Norwegian market.

(177) Firstly JET Norway is only active in south-east Norway and the company's share of that regional market is higher than at national level. JET Norway's market share in the region is approximately [5-10]* %. Furthermore, despite the fact that the Parties' combined market share in the region is not dramatically higher than at national level ([30-40]*% instead of [30-40]*%), JET Norway's market shares reach between [5-10]*% and [10-20]*% in five counties and the Parties have a combined market share of [30-50]*%, that is to say above their combined market share in south-east

Norway, in three of those counties.[96] JET Norway's competitive constraint therefore appears to be significantly higher in parts of south-east Norway than at national level.

(178) Secondly, JET is the most efficient competitor in terms of throughput. JET Norway's average fuel volume per site is substantially higher than the national average, roughly the double, making it the most efficient service station network in Norway, as acknowledged by the Parties themselves.[97]

(179) Thirdly, the Parties' arguments concerning JET Norway's weaknesses must also be put into perspective because, despite its logistical difficulties, JET Norway is profitable. JET Norway's fuel margin rate (fuel gross margin / fuel revenue) was […]*% in 2003, […]*% in 2004, […]*% in 2005, […]*% in 2006 and […]*% in 2007. In 2003-2007 JET Norway's EBITDA[98] / total revenue ratios were: […]*% in 2003, […]*% in 2004, […]*% in 2005, […]*% in 2006 and […]*% in 2007.

(180) Fourthly, as already stated for Sweden (see recital 98 above), the notion of "price follower" appears misplaced when analysing the functioning of the affected markets as JET Norway systematically undercuts manned rivals' prices. JET Norway's pricing strategy actually consists of maintaining lower prices with a difference, currently targeted at NOK […]* per litre for petrol and NOK […]*per litre for diesel.[99]

(181) In this market, the intensity of the competitors' reaction to a price change is important. Even if JET Norway is a "price follower", the company can still act as a strong competitive constraint, in particular in a situation where the incentives of JET Norway's competitors appear to be more or less aligned.

(182) JET Norway's capability to react to price changes made by competitors is apparent from internal Statoil documents. […]*. [100]

(183) Likewise, several other internal Statoil documents show that JET Norway is perceived by consumers as the cheapest of the automated networks.[101]

---

96 Ostfold ([30-40]*% - Statoil: [20-30]*%; JET: [10-20]*%) Akershus ([30-40]*% - Statoil: [20-30]*%; JET: [5-10]*%), Telemark ([30-40]*% - Statoil: [30-40]*%; JET: [5-10]*%), Oslo ([30-40]*% - Statoil: [30-40]*%; JET: [5-10]*%), Vestfold ([40-50]*% - Statoil: [30-40]*%; JET: [10-20]*%) - StatoilHydro's response of 8 April 2008 to the Commission's request of information of 3 April 2008.

97 JET had an average fuel throughput of [3,000-3,500]* m^3/year per station in 2007. According to the data provided by the notifying party, the average fuel throughput of the other four networks was as follows (in m^3/year per station) in 2007: [1,000-1,500]*for YX Energi; [1,500-2,000]*for Shell; [1,500-2,000]*for StatoilHydro; [1,500-2,000]*for Esso.

98 Earnings before Interest, Taxes, Depreciation, and Amortization.

99 […]*.

100 Minutes of an internal meeting of Statoil of 17 October 2007. […]*

101 See Fuel tracker quarterly reports of 1st, 2nd and 4th quarters 2007.

(184) Fifthly, the market investigation and the consumer survey carried out by the Commission have confirmed the strong competitive constraint exerted by JET Norway.

(185) According to the three competitors of SH and to JET Norway itself, the Commission market investigation has demonstrated that JET Norway exerts the strongest, or at least one of the strongest, competitive constraints in the Norwegian market. In particular, JET Norway is seen as the company exerting the highest competitive restraint in terms of prices in the area where it is active (that is to say south-east Norway).

(186) The consumer survey carried out by the Commission has confirmed that a majority of Norwegian consumers believe that JET Norway will compete with low fuel prices in the future. This majority is even larger for consumers located in south-east Norway.[102] A majority of consumers questioned stated that the acquisition of JET by SH would have a negative impact on competition.[103]

(187) For all these reasons, the removal of JET Norway as an independent competitor, in the context of an oligopolistic market structure with high barriers to entry, raises serious doubts about the compatibility of the proposed transaction with the common market and with the EEA agreement.

(188) Moreover, this conclusion is supported by the Commission's econometric analysis of pricing data. A similar analysis of pricing data to that carried out for Sweden was also carried out for Norway.

(189) The results from the daily cross-sectional regression analysis implied that the presence of a JET Norway station in Statoil's clusters has constrained Statoil's prices for diesel at least since […]* 2006 and for petrol at least since […]* 2007. The outcome of the Commission's analysis differed from that of the analysis carried out by the Parties, according to which the impact of JET Norway on Statoil's prices is no different from that of other competitors'.

---

[102] The question was: "a number of stations chains will be read out to you. For each one, please state whether you think that particular chain will compete with low prices on fuel in the future." There has been a yes percentage above 50% for the following network stations (percentage of yes stated by the respondents located in South east Norway mentioned into brackets). JET: 52% (71%); 1-2-3 Statoil: 53% (51%); Uno-X (YX Energi): 51% (58%).

[103] The question was: "Statoil has announced that it intends to acquire JET in Norway. What impact – if any – do you think the Statoil's acquisition of JET and the disappearance of the JET brand will have on competition between the remaining fuel station chains in Norway?" The responses were as follows (percentage stated by the respondents located in South east Norway mentioned into brackets). Negative impact – competition will decrease: 45% (56%); No or little impact – Competition will remain the same: 31% (28%); Positive impact – Competition will increase: 8% (6%); No reply/ does not know: 16% (9%). Out of a sample of 1001 consumers, 506 were living in south-east Norway. These 506 consumers represent 50.5% of the sample which roughly corresponds to the proportion of the total Norwegian population living in south-east Norway.

(190) The Parties claim that the Commission's analysis omitted certain key variables[104], but they have not put forward any evidence which would invalidate the conclusions of the analysis. The Parties also suggested that the regressions should be limited only to stations in south-east Norway and in cities. This cannot be accepted, as it may lead to selection bias in the regression analysis. Nevertheless, the Commission's conclusions would be no different even if this suggestion was followed since the effect of JET Norway on Statoil's pricing is still significant. For example, in the analysis of the effects of JET Norway and [another competitor]*on Statoil's pricing, the presence of JET Norway in 2007 decreased the price of diesel at Statoil's stations on average by [0-5]*% when [the other competitor]* was not present in the same cluster and by [0-5]*% when [the other competitor]* was also present in the same cluster.[105]

(191) The Commission's regression analysis during the second phase investigation followed the same framework as for Sweden. Specifically, the data was aggregated to monthly levels and regressions that were pooled across different months and across full-service and automated were estimated using the robust regression technique. Following […]*, the base model includes specific dummies for Esso, Shell, YX Energi and Best in addition to the JET Norway presence dummy, while the rest of the stations are treated as automated and an additional dummy captures the effect of those stations. In addition, the same control variables as for Sweden were included in the regressions. The Commission also ran two other models to check for robustness as in the case of Sweden.[106]

(192) The results from the base model imply that Statoil's petrol prices were on average systematically lower by [0-5]*% whenever JET was present in a Statoil cluster, and Statoil's diesel prices were on average systematically lower by [0-5]*%. Both of these results are statistically significant. The findings were broadly similar for the other two models that were estimated by the Commission. The Parties did not provide any regression analysis for Norway during the Phase II investigation.

(193) The Commission's pricing analysis is consistent with a recent analysis on the Norwegian market made by PFC Energy, a strategic advisor in global energy, concerning the role played by JET Norway in south-east Norway. PFC Energy concludes that JET Norway is still the main driver of petrol prices in this part of the country.[107]

---

[104] See "Comments on the Commission's econometric model for Norway" (RBB Economics – Brussels April 2008).

[105] These averages are computed over both statistically significant and statistically insignificant coefficients.

[106] This included (i) using deviations of Statoil pump prices from Statoil's nationally recommended prices instead of the log of Statoil's pump prices, and (ii) replacing the competition variables with a number of dummies that indicated the number of competitors in each of Statoil's clusters, and this set of dummies was further interacted with the presence of JET.

[107] PFC Energy's report for Norway (October 2007 – p. 50) states that *"although they tend to be very widely publicized in the Norwegian press, price wars continue to be highly regionalized. This is attributable to two factors: geography and JET. JET is still the main driver of gasoline price wars, due to its 'low-cost' strategy, and has been marketing diesel at its Norwegian outlets, which rapidly brought down prices in the diesel segment. JET's presence being limited to the southeast of Norway confines much of the fierce competition to this area. The fact that JET stations are being acquired by Statoil is unlikely to alleviate this*

(194) Finally, the NCA has provided the Commission with an analysis, according to which JET Norway has a significant impact on competition in south-east Norway. The NCA has concluded that JET Norway's presence has a downward effect on market prices.[108]

6.4.3. Unilateral effects - conclusion

(195) Considering in particular JET Norway's position as the most efficient low-cost operator in the Norwegian market with a very strong brand and a proven track record of undercutting competitors' prices as well as the fact that JET Norway's presence in Statoil's clusters puts a particular constraint on Statoil's pricing, it is concluded that the removal of JET Norway as an independent competitor, in a context of high barriers to entry, raises serious doubts about the compatibility of the proposed transaction with the common market and with the EEA agreement.

(196) Given that conclusion, and considering also the commitments proposed by the Parties, it is not necessary for the purposes of this Decision to assess the risk that the proposed transaction would also give rise to co-ordinated effects.

6.5. Commitments concerning the Swedish and the Norwegian markets for retail sales of motor fuels

(197) On 25 July 2008, SH submitted a proposal for a set of commitments intended to remove the Commission's "serious doubts" about the compatibility of the proposed transaction with the common market.

6.5.1. Description of the proposed commitments concerning Sweden

The remedy network

(198) SH proposes to divest a network consisting of 158 unmanned stations, including 118 of the most efficient stations currently operated by Norsk Hydro (under the "Hydro" or the "Uno-X" brands) and 40 fuel stations currently operated by JET Sweden ("the remedy network").

(199) The JET brand is not being acquired by SH and will therefore not form part of the remedy network. However, SH and ConocoPhillips will agree reasonable arrangements in respect of site branding (transitional licence for the “JET” trademark, brand and trade dress) and the use of the JET card for a maximum period of […]* years from the date of the completion of the proposed transaction.

(200) The 158 sites which SH proposes to divest are either owned by Norsk Hydro or JET Sweden or leased from the dealer or a third party. The fuel equipment on site, such as tanks, pumps, signage and payment units, are all owned by SH or JET Sweden.

---

source of pricing pressure given the Norwegian company's reported intention of maintaining them in an unmanned format. Regional price competition is also due to the high density/low throughput nature of the Norwegian network as well as high costs involved when transporting product to remote locations."

108 Letter of the Norwegian Competition Authority, 2 April 2008.

(201) The remedy network has a geographic coverage throughout Sweden, with more stations in south Sweden, but also presence in the north of Sweden along the coast.

(202) In 2007, the remedy network had an aggregate sales volume of [380-410]*million litres, an average throughput of [2-2.5]* million litres per site per year, and represented a market share of approximately [5-10]*%.

(203) After replacement of the JET brand, the Swedish Divestment Business is expected to reach a total volume of [380-410]* million litres and an average throughput of approximately [2.5-3]* million litres per site per year.

(204) The remedy network will initially employ […]* FTEs (full time equivalents), a number which is sufficient to fulfil the necessary operational responsibilities (management, pricing, controlling, field management, marketing and procurement coordination).

Support functions

(205) All other functions are support functions, which can be outsourced. These support functions include logistics, maintenance, IT, Information Services and Telecommunications and Finance. These services will be provided either through third-party outsourcing arrangements (logistics and maintenance) or through transitional support arrangements with the existing Hydro organisation (with the appropriate ring-fencing mechanisms).

(206) On a stand-alone, "green-field" basis, the remedy network would require an additional […]* FTEs to carry out the IT, Information Services and Telecommunications and Finance services to be provided to the remedy network by the Hydro organization during an initial phase, bringing the total FTE count of the remedy network to […]*, if run as a stand alone operation.

(207) The purchaser will be offered the option of integrating these support functions, as well as the underlying systems and personnel, from the Hydro organisation. Alternatively, the purchaser may decide to integrate the remedy network with its own back-office infrastructure, thus removing the need for a further transfer of Hydro systems and personnel to the remedy network.

Supply and Storage

(208) If requested by the purchaser, SH will offer to supply petrol 95, 98 octane petrol ("petrol 98") and diesel to the Swedish Divestment Business on competitive normal commercial terms until 31 December 2013. Supply will be on an “ex rack” basis at SH depots and third party depots at which SH presently has throughput or exchange agreements.

(209) Further, SH will permit the remedy network to use several SH depots for petrol 95, petrol 98 and diesel on a throughput basis on competitive normal commercial terms until 31 December 2013.

(210) SH will also use reasonable commercial endeavours to extend agreements with its own suppliers of E85 to the remedy network.

(211) Provided and to the extent that SH will supply the remedy network with fuel, SH will also offer to provide the remedy network , on competitive normal commercial terms, arrangements to meet the latter's compulsory storage obligations under Swedish law until 31 December 2011, if so required.

(212) Finally, SH will offer the Purchaser of the remedy network the option to buy JET Sweden's 50% shareholding in Norrköping Depå AB, a joint venture between SH and JET Sweden, which owns and operates the storage depots in Gävle and Norrköping.

Transport

(213) The distribution of fuel products from terminals to the stations, including the necessary transport planning, will be fully outsourced to external suppliers. Full outsourcing is made possible by giving the logistics supplier access to the station's automatic tank gauging data, allowing for deliveries as and when required. This, or similar, setups are already in widespread use in the industry.

(214) SH will negotiate, for the benefit of the remedy network, relevant contracts with logistic operators, for the distribution of refined products to the remedy network's stations (where appropriate having first consulted with the purchaser) until 31 December 2011.

6.5.2. Description of the proposed commitments in Norway

The remedy network

(215) SH proposes to divest JET Norway in its entirety ("the remedy network"). SH will acquire, but not exercise control over JET Norway and will resell that company with appropriate transitional arrangements.

(216) The JET brand is not being acquired by SH and will therefore not form part of the remedy network. However, SH and ConocoPhillips will agree reasonable arrangements in respect of site branding (transitional licence for the "JET" trademark, brand and trade dress) and the use of the JET card for a maximum period of two years from the date of the completion of the proposed concentration.

(217) After replacement of the JET brand, the remedy network is expected to reach a total volume of [75-125]*million litres and an average throughput of approximately [2.5-3]* million m^3 per site per year.

(218) The purchaser must not have had a market share of more than 10% of the Norwegian market for the retail sale of motor fuels in 2007.

(219) The remedy network consists of 40 automated stations in south east Norway, currently operated under the "JET" brand. All the stations are directly operated by JET Norway. JET Norway's 40 sites are either owned by it or leased from third parties.

(220) Given the high degree of automation made possible by the IT-platform, the single line of business (fuel sales over unmanned stations) and standardized business

model, the remedy network will require only a small management and customer service organisation (JET Norway has only two employees) .

(221) JET Norway is managed from JET Scandinavia's Stockholm office, with administrative support provided from both its Copenhagen and Stockholm offices. Prior to Closing of the Sale of the remedy network to the Purchaser, these functions will continue to be provided by JET Scandinavia from its offices in Copenhagen and/or Stockholm. At Closing, they will be assumed by the Purchaser, subject to possible short-term transitional arrangements.

Supply and Storage

(222) SH will offer the remedy network the option to buy petrol 95 and diesel on an "ex-rack" basis from SH on competitive normal commercial terms and conditions until 31 December 2011, including if applicable for supply to replacements of any closed JET stations in the same geographic area. The ex-rack sale and supply will be performed at SH's depot in Oslo (with transfer of ownership there).

(223) In addition, SH will offer the remedy network, including replacements of any closed stations in the same geographic area, an option to buy up to 10,000 m3 per year of petrol 95 on an "ex-rack" basis from SH on competitive normal commercial terms for delivery at the ExxonMobil depots at Tønsberg (Slagen) and Fredrikstad until 31 December 2011 […]*.

(224) Provided and to the extent that SH will supply the remedy network JET with fuel, SH will also offer to provide the remedy network, on competitive normal commercial terms, arrangements to meet the latter's compulsory storage obligations under Norwegian law until 31 December 2011, if so required.

(225) Finally, SH will offer the purchaser of the remedy network the option to buy the Strömstad depot in Sweden, which is currently used by JET Norway but owned and operated by JET Sweden.

Transport

(226) The distribution of fuel products to the JET Norway stations, including the necessary transport planning, is fully outsourced to external trucking companies. JET Norway's contracts with external trucking companies will be transferred to the purchaser of the remedy network.

(227) If required, SH will offer to negotiate, for the benefit of the remedy network, relevant contracts with logistic operators, for the distribution of refined products to the remedy network's stations, until 31 December 2011.

6.5.3. *Market test - Introduction*

(228) On 1 August 2008 the Commission sent out requests for information to "market test" the proposed commitments of SH in Norway and Sweden. Due to the specificities of the markets concerned (no distributors involved and JET has no business customers) the market test was only sent to actual and potential competitors of the Parties.

(229) Respondents were asked whether the remedies would remove competition concerns and whether they would establish a viable competitor. The Commission also asked the competitors to list advantages and disadvantages of the remedy network. Finally, the Commission asked the competitors whether they would be interested in buying the divested networks.

6.5.4. *Result of the market test and assessment for Sweden*

(230) The proportion of respondents considering that the proposed remedy would remove the competition concerns and the proportion of those considering the contrary was balanced.

(231) The same balanced result was noted as to the viability of the network divested.

(232) Finally, a clear majority of respondents considered that the duration (three years) of the supply agreement offered by SH to the potential purchaser was too short. Several respondents stated that a five-year duration would be necessary.

(233) The doubts expressed about the removal of competition concerns mainly referred to SH's current strong market position. Some competitors were concerned that a small network would not be able to exert a competitive constraint on SH post merger.

(234) The main doubts as regards the viability of the remedy network expressed by the competitors refer to the global and the average throughputs of the newly created network. In addition, one competitor considered that Hydro stations to be divested were badly located.

(235) For the following reasons, the Commission does not find those concerns well grounded.

(236) Firstly, the remedy network will have the third highest average throughput, after SH and Tanka, in the Swedish market. Moreover, the remedy network has nationwide coverage and is well represented in the most populated areas.

(237) Secondly, the market test confirms that the remedy network will have the "critical mass" necessary to cover overhead costs and be an efficient competitor.

(238) Thirdly, the remedy network will be present with at least one station in 80 of the 109 clusters in which JET Sweden is present. As regards the remaining 29 clusters, at least 3 competitors will be present within a 5 minute driving time of each Statoil station in all but 5 clusters. The unresolved overlaps at this very local level are regarded as *de minimis* in relation to the overall size of the remedy network.

(239) Finally, several respondents expressed an interest in acquiring the network in Sweden.

(240) A majority of competitors considered that the supply arrangements included in the remedy package needed to be extended. On 1 September 2008 SH submitted a revised proposal for commitments, offering potential purchasers of the Swedish Divested Business the possibility to extend the supply agreement from three to five years, until 31 December 2013. Given this extension, the length of the supply arrangements is no longer a cause for concern to the Commission.

Conclusion

(241) In the light of the above, it is concluded that the proposed remedies will remove the Commission's serious doubts concerning the proposed concentration in Sweden.

6.5.5. Result of the market test and assessment for Norway

(242) The overwhelming majority of competitors considered that the divestiture of JET Norway would establish a viable competitor and remove the competition concerns expressed by the Commission.

(243) The purchaser of the remedy network will have an incentive to put a competitive constraint on SH and the other three incumbents, since the purchaser must not have had a market share of more than 10% of the Norwegian market for the retail sale of motor fuels in 2007. This provision will prevent any of the other three incumbents from acquiring the Norwegian Divested Business.

(244) However, like for Sweden, a clear majority of respondents considered that the duration (three years) of the supply agreement offered by SH to the potential purchaser was insufficient. Several respondents stated that a five-year duration would be necessary. On 1 September 2008 SH submitted a revised proposal for commitments offering the potential purchaser of the Norwegian Divested Business the possibility to extend the supply agreement from three to five years, until 31 December 2013. Given this extension, the length of the supply arrangements is no longer a cause for concern to the Commission.

Conclusion

(245) In the light of the above, it is concluded that the proposed remedies will remove the Commission's serious doubts concerning the proposed concentration in Norway.

7. CONCLUSION

(246) The remedies submitted by SH are sufficient to remove the serious doubts raised by the proposed concentration. Accordingly, subject to compliance with the commitments submitted by SH, the notified operation should be declared compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 8(2) of the Merger Regulation.

(247) This decision should be subject to conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission. The conditions should cover commitments relating to the divestiture itself, whereas the obligations should cover commitments related to the divestiture, such as investments in the divestment business before it is divested and the monitoring mechanism.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration whereby StatoilHydro ASA acquires sole control within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 of the undertakings ConocoPhillips Denmark APS, ConocoPhillips Nordic AB and ConocoPhillips JET AS is hereby declared compatible with the common market and the EEA Agreement.

Article 2

Article 1 is subject to full compliance with the conditions set out in Sections B, C, E, and the list of stations in Appendix 1 to the Schedule to Annex I and in Sections B, C, E, and the list of stations in Appendix 1 to the Schedule to Annex II.

Article 3

Article 1 is subject to full compliance with the obligations set out in Sections D, F and the Schedule to Annex 1, except the list of stations in Appendix 1 to that Schedule, and in Sections D and F and the Schedule to Annex II, except the list of stations in Appendix 1 to that Schedule.

Article 4

This Decision is addressed to:

STATOILHYDRO ASA
Forusbeen 50
4035 Stavanger
Norway

Done at Brussels, 21/10/2008

For the Commission,
(signed)
Neelie KROES
Member of the Commission

Annex I

Sweden

Remedy Phase II

1 September 2008

Case M.4919 - StatoilHydro/ConocoPhillips

Revised Commitments to the European Commission

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No. 139/2004 (the **Merger Regulation**), StatoilHydro ASA (**StatoilHydro**) hereby provides the following Commitments (the **Commitments**) to enable the European Commission (the **Commission**) to declare the acquisition by StatoilHydro of ConocoPhillips' subsidiaries carrying on the retailing of motor fuels in Denmark, Norway and Sweden (**JET**) compatible with the common market and the EEA Agreement by a decision pursuant to Article 8(2) of the Merger Regulation (the **Decision**).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations to the Decision, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by StatoilHydro, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Closing: the transfer of the legal title of the Divestment Business to a Purchaser.

Divestment Business: the business as defined in Section B paragraph 1 and the attached Schedule.

Divestiture Trustee: one or more natural or legal person(s), independent from StatoilHydro, who is approved by the Commission and appointed by StatoilHydro and who has received from StatoilHydro the exclusive mandate to sell the Divestment Business to a Purchaser at no minimum price.

Divestiture Trustee Mandate: The exclusive mandate granted by StatoilHydro to the Divestiture Trustee to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of completion of the acquisition by StatoilHydro of ConocoPhillips Nordic AB.

First Divestiture Period: the period of […]* months from the Effective Date.

Hydro Stations: the 118 Hydro stations listed in **Annex 1**.

JET Stations: the 40 JET stations listed in **Annex 1**.

JET Sweden: ConocoPhillips Nordic AB, a limited company incorporated under the laws of Sweden, with its registered office at Isafjordsgatan 30C, SE-164 86 Stockholm, Sweden.

JET Sweden Hold Separate Manager: the person appointed by StatoilHydro to manage the day-to-day business of JET Sweden under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from StatoilHydro, who is approved by the Commission and appointed by StatoilHydro, and who has the duty to monitor StatoilHydro's compliance with the conditions and obligations attached to the Decision.

NHO: Norsk Hydro Olje AB, a private company under Swedish law with its registered office at Tegeluddsvägen 76, SE-10254 Stockholm, Sweden.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, as listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section E, paragraph 20.

Remedy Hold Separate Manager: the person appointed by StatoilHydro to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

StatoilHydro: StatoilHydro ASA, a public limited company under Norwegian law, listed on the Norwegian and New York stock exchanges, with its registered office at Forusbeen 50, N-4035 Stavanger, Norway.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of […]* months from the end of the First Divestiture Period.

Section B. The Divestment Business

Structure and definition of the Divestment Business

1. The Divestment Business will consist of a network of 158 unmanned stations for the retailing of motor fuels comprising: (i) 118 stations currently operated by NHO and (ii) 40 stations currently operated by JET Sweden. At the date of the adoption of the Decision, the Divestment Business will consist of the 118 stations operated by NHO. At the latest at Closing, the 40 JET stations currently operated by the Divestment Business will be transferred from JET Sweden to the Divestment Business. The legal and functional structure of the Divestment Business is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes:

   (a) All tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

   (b) All licences, permits and authorizations issued by any governmental organization required by the Divestment Business;

   (c) All contracts, leases, commitments and customer orders of the Divestment Business; all customers, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as **Assets**);

   (d) The Personnel;

   (e) The benefit of contracts for the supply of products and services, as detailed in the Schedule; and

   (f) If required by the Purchaser, JET Sweden's 50% shareholding in Norrköping Depå AB, a joint venture between StatoilHydro and JET Sweden, which owns and operates the storage depots in Gävle and Norrköping.

Section C. Commitment

Commitment to divest

2. In order to restore effective competition, StatoilHydro commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 21. To carry out the divestiture, StatoilHydro commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If StatoilHydro has not entered into such an agreement at the end of the First Divestiture Period, StatoilHydro shall grant the Divestiture Trustee the Divestiture Trustee Mandate to sell the Divestment Business in accordance with the procedure described in paragraph 37 within the Trustee Divestiture Period.

3. StatoilHydro shall be deemed to have complied with the commitment set out in paragraph 2 above if, by the end of the Trustee Divestiture Period, StatoilHydro has

entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms of that agreement in accordance with the procedure described in paragraph 21 and if Closing of the sale of the Divestment Business takes place within a period not exceeding […]* months after the approval of the Purchaser and the terms of that agreement by the Commission, unless otherwise extended by the Commission pursuant to paragraph 42 below.

4. In order to maintain the structural effect of the Commitments, StatoilHydro shall, for a period of […]* years after the Effective Date, not acquire direct or indirect influence over the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market and the functioning of the EEA Agreement.

5. From the Effective Date and until the transfer of the JET Stations to the Divestment Business, StatoilHydro will acquire ownership of 100% of the share capital of JET Sweden, but will not exercise control (as set out in Article 3 of the Merger Regulation) over that undertaking. StatoilHydro will hold JET Sweden separately under the supervision of the Monitoring Trustee until transfer of the JET Stations to the Divestment Business.

SECTION D. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

6. From the date of adoption of the Decision until Closing, StatoilHydro shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. Equally, from the Effective Date, through the Monitoring Trustee, StatoilHydro will preserve the economic value and competitiveness of JET Sweden until the transfer of the JET Stations to the Divestment Business. In particular, StatoilHydro undertakes:

   (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business; or that might alter the nature and scope of the activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available sufficient resources for the development of the Divestment Business on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business;

   (d) from the Effective Date, to respect the same obligations detailed under (a) to (c) above, as regards JET Sweden until the transfer of the JET Stations to the Divestment Business.

Hold-separate obligations of StatoilHydro

7. StatoilHydro commits, from the date of adoption of the Decision until Closing, to keep the Divestment Business separate from StatoilHydro and to ensure that the Remedy Hold Separate Manager has no involvement in any business being retained or acquired by StatoilHydro and vice-versa. StatoilHydro shall also ensure that the Personnel do not report to any individual outside the Divestment Business.

8. In addition, StatoilHydro commits, from the Effective Date until the transfer of the JET Stations to the Divestment Business, to keep JET Sweden separate from StatoilHydro and to ensure that the JET Sweden Hold Separate Manager has no involvement in any business being retained or acquired by StatoilHydro and vice-versa. StatoilHydro shall also ensure that the JET Sweden personnel do not report to any individual outside JET Sweden.

9. StatoilHydro shall appoint a Monitoring Trustee in accordance with the provisions of Section F to carry out the functions specified in paragraph 34 below.

10. Until Closing, StatoilHydro shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct entity separate from StatoilHydro itself. The Remedy Hold Separate Manager named in the Schedule shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. He shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability and competitiveness and its independence from StatoilHydro.

11. From the Effective Date and until the transfer of the JET Stations to the Divestment Business, StatoilHydro shall assist the Monitoring Trustee in ensuring that JET Sweden is managed as a distinct entity separate from StatoilHydro itself. StatoilHydro shall appoint the JET Sweden Hold Separate Manager, who shall be responsible for the management of JET Sweden, under the supervision of the Monitoring Trustee. He shall manage JET Sweden independently and in the best interest of the business with a view to ensuring its continued economic viability and competitiveness and its independence from StatoilHydro.

12. To ensure that the Divestment Business is held and managed as a separate entity, the Monitoring Trustee shall exercise StatoilHydro’s rights as shareholder in the Divestment Business (except for its rights to dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling StatoilHydro’s obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the board of directors, who have been appointed on behalf of StatoilHydro or any Affiliated Undertaking. Upon request of the Monitoring Trustee, StatoilHydro shall cause such member(s) of the boards to resign.

13. To ensure that JET Sweden is held and managed as a separate entity, the Monitoring Trustee shall exercise StatoilHydro’s rights as shareholder in JET Sweden (except for its rights to any dividends that are due before the transfer of the JET Stations to the Divestment Business), with the aim of acting in the best interest of the business of JET Sweden, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling StatoilHydro’s obligations under the Commitments.

Furthermore, the Monitoring Trustee shall have the power to replace members of the board of directors of JET Sweden, who have been appointed on behalf of StatoilHydro or any Affiliated Undertaking. Upon request of the Monitoring Trustee, StatoilHydro shall cause such member(s) of the boards of JET Sweden to resign.

Ring-fencing

14. StatoilHydro shall implement all necessary measures to ensure that it does not, after the date of adoption of the Decision, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. StatoilHydro may obtain information relating to Divestment Business which is reasonably necessary for the preparation and divestiture of the Divestment Business, or whose disclosure to StatoilHydro is required by law or to enable StatoilHydro to comply with any applicable law, regulation, rule of any stock exchange or similar obligation.

15. StatoilHydro shall implement all necessary measures to ensure that it does not, after the Effective Date and until transfer of the JET Stations to the Divestment Business, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to JET Sweden. StatoilHydro may obtain information relating to JET Sweden which is reasonably necessary for the preparation and divestiture of the Divestment Business, or whose disclosure to StatoilHydro is required by law or to enable StatoilHydro to comply with any applicable law, regulation, rule of any stock exchange or similar obligation.

Non-solicitation clause

16. StatoilHydro undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of […]* years after Closing subject to the possibility for StatoilHydro to rehire any member of the Key Personnel who would not be hired by the Buyer upon Closing or who would be terminated by the Buyer during the […]* year period.

Due Diligence

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, StatoilHydro shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Key Personnel and allow them reasonable access to the Key Personnel.

Reporting

18. StatoilHydro shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

19. StatoilHydro shall inform the Commission and the Monitoring Trustee, if applicable, on the preparation of the data room documentation and the due diligence process and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending any such memorandum out to potential purchasers.

SECTION E. THE PURCHASER

20. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission must:

(a) be independent of and unconnected to StatoilHydro;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with StatoilHydro and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be unreasonably delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business; and

(d) in the event of joint sale of the Divestment Business with the divestment business identified in the commitments given in respect of Norway to the Purchaser, comply with the Purchaser Requirements as set out in paragraph 16 (d) of the Commitment Proposal for Norway (the before-mentioned criteria for the Purchaser are referred to hereafter as the **Purchaser Requirements**).

21. The final binding sale and purchase agreement shall be conditional on the Commission's approval of the Purchaser. When an agreement has been reached with a Purchaser, StatoilHydro shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. StatoilHydro must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

SECTION F. TRUSTEE

I. Provisions applicable to the Monitoring Trustee and the Divestiture Trustee

Qualifications of the Trustee

22. The Trustee shall be independent of StatoilHydro and JET Sweden, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by StatoilHydro in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal to appoint a Trustee

23. The proposal of StatoilHydro to appoint a Trustee shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 22 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, StatoilHydro shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, StatoilHydro shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by StatoilHydro

25. If all the proposed Trustees are rejected, StatoilHydro shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 22 and 24.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom StatoilHydro shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee

27. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or StatoilHydro, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Replacement, discharge and reappointment of the Trustee

28. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

(a) the Commission may, after hearing the Trustee, require StatoilHydro to replace the Trustee; or

(b) StatoilHydro, with the prior approval of the Commission, may replace the Trustee.

29. If the Trustee is removed according to paragraph 28, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure laid down in the present Section F.

30. Apart from the cases according to paragraph 28, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

Other common provisions

31. StatoilHydro shall indemnify the Trustee and its employees and agents (each an **Indemnified Party**) and hold each Indemnified Party harmless against any claim arising out of the Trustee's fulfilment of its mandate except if such claim(s) result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors. StatoilHydro hereby agrees that an Indemnified Party shall have no liability to StatoilHydro for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

32. At the expense of StatoilHydro, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to StatoilHydro's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Trustee mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should StatoilHydro refuse to approve the

advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard StatoilHydro. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served StatoilHydro or the Monitoring Trustee during the Divestiture Period, if the Divestiture Trustee considers this in the best interest of an expedient sale.

II. Provisions applicable to the Monitoring Trustee

Proposal for a Monitoring Trustee

33. No later than one week after the date of adoption of the Decision, StatoilHydro shall submit a list of one or more persons whom StatoilHydro proposes to appoint as the Monitoring Trustee to the Commission for approval.

Duties and obligations of the Monitoring Trustee

34. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by StatoilHydro with the conditions and obligations attached to the Decision. Equally, from the Effective Date, the Monitoring Trustee shall oversee the management of JET Sweden with a view to ensuring its continued economic viability and competitiveness until the transfer of the JET Stations to the Divestment Business. To that end the Monitoring Trustee shall:

a. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from StatoilHydro in accordance with paragraphs 6 and 7 of the Commitments;

b. monitor the preservation of the economic viability and competitiveness of JET Sweden, and the keeping separate of JET Sweden from StatoilHydro in accordance with paragraphs 6 and 8 of the Commitments;

c. supervise the management of the Divestment Business as a distinct and saleable entity in accordance with paragraph 10 and 12 of the Commitment;

d. supervise the management of JET Sweden as an independent competitor from StatoilHydro in accordance with paragraph 11 and 13 of the Commitment;

e. in consultation with StatoilHydro, (i) determine all necessary measures to ensure that StatoilHydro does not after the date of adoption of the Decision until Closing in respect of the Hydro stations and after the Effective Date and until the transfer of the JET Stations to the Divestment Business in respect of JET Sweden obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business and/or JET Sweden, including through the Divestment Business' participation in central information technology networks; (ii) decide whether such information may be disclosed to StatoilHydro as the disclosure is reasonably necessary to allow StatoilHydro to carry out the divestiture or as the disclosure is required by law or to enable StatoilHydro to comply with any applicable law, regulation, rule of any stock exchange or similar obligation; (iii) ensure that appropriate ring-fencing mechanisms are in place to ensure that any sharing of back-office functions with StatoilHydro does not lead to exchange of confidential information or coordination of competitive behaviour;

f. monitor the splitting and transfer of assets between NHO, JET Sweden and StatoilHydro or Affiliated Undertakings for the creation of the Divestment Business.

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations set forth in the Decision;

(iv) propose to StatoilHydro such measures as the Monitoring Trustee considers necessary to ensure StatoilHydro's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business as well as the economic viability and competitiveness of JET Sweden, the holding separate of the Divestment Business and JET Sweden and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Key Personnel;

(vi) provide to the Commission, sending StatoilHydro a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business and JET Sweden so that the Commission can assess whether the businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending StatoilHydro a non-confidential copy at the same time, if it concludes on reasonable grounds that StatoilHydro is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 21, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser.

III. Provisions applicable to the Divestiture Trustee

Appointment of the Divestiture Trustee

35. If a binding sale and purchase agreement has not been entered into one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by StatoilHydro at that time or thereafter, StatoilHydro shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

Proposal by StatoilHydro

36. No later than one month before the end of the First Divestiture Period, StatoilHydro shall submit a list of one or more persons whom StatoilHydro proposes to appoint as Divestiture Trustee to the Commission approval.

Duties and obligations of the Divestiture Trustee

37. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 21. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall act in the best financial interests of StatoilHydro and subject to StatoilHydro's obligations set forth in the Decision and these Commitments.

38. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to StatoilHydro.

IV. Duties and obligations of StatoilHydro

39. StatoilHydro shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of StatoilHydro's or the Divestment Business' or JET Sweden's books, records, documents, management or other personnel, facilities, sites and technical information

necessary for fulfilling its duties under the Commitments and StatoilHydro, the Divestment Business and JET Sweden shall provide the Trustee upon request with copies of any document. StatoilHydro, the Divestment Business and JET Sweden shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

40. StatoilHydro shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business and JET Sweden. This shall include all administrative support functions relating to the Divestment Business and JET Sweden which are currently carried out at headquarters level. StatoilHydro shall provide and shall cause its advisors to provide the Monitoring Trustee, on his request, with the information submitted to potential purchasers, in particular, if applicable, give the Monitoring Trustee access to the data room documentation and all other information provided to potential purchasers in the due diligence process. StatoilHydro shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

41. StatoilHydro shall grant or procure that Affiliated Undertakings grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, StatoilHydro shall cause the documents required for effecting the sale and the Closing to be duly executed.

SECTION G. REVIEW CLAUSE

42. The Commission may, where appropriate, in response to a request from StatoilHydro showing good cause and accompanied by a report from the Monitoring Trustee:

(i) grant an extension of the time periods applicable in relation to the Commitments, or

(ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings which compose the Commitments.

Where StatoilHydro seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall StatoilHydro be entitled to request an extension within the last month of any period.

1 September 2008

…………………………………………………………...

John Ratliff Frédéric Louis

Duly authorized for and on behalf of StatoilHydro

SCHEDULE to Annex I

1. The Divestment Business

In this schedule we describe: a) the Remedy Network; b) StatoilHydro's investment plan for the Divestment Business; c) the supply and transport and daily operation/maintenance arrangements; d) the Divestment Business' retail motor fuels volume projections

(a) The Remedy Network

The Divestment Business consists of 158 unmanned stations, centred around the 118 most competitive stations currently operated by NHO and an additional 40 stations currently operated by JET Sweden.

All 40 JET Stations are unmanned and fully-automated; The 118 Hydro Stations will be unmanned and operated on a fully automated basis by the end of January 2009. At present the status is:

- […]*;
- […]*;
- […]*.

On all sites the fuel business will be operated by the Divestment Business under an unmanned format. The non-fuel business of the […]* stations with current non-fuel activity will be operated by independent entities under a different branding. This process will be completed by the end of January 2009.

The Divestment Business will not have any relationship with the independent entities operating the non-fuel activities close to the […]* stations concerned. Where the Divestment Business owns the premises housing these activities, there will be a landlord-tenant relationship between the Divestment Business and these entities. For the rest, these non-fuel activities will be operated completely independently from the Divestment Business (to illustrate the relationship, it will be similar to that of a fast food outlet, such as McDonalds, sharing a site with a fuel retailer).

The 158 sites are either owned by NHO or JET Sweden (as appropriate) or leased from the dealer or a third party landlord. […]*.[…]*. All property titles (owned or leased) will be owned by the Divestment Business. The fuel equipment on site, such as tanks, pumps, signage and payment units, are all owned by NHO or JET Sweden, except for three Hydro station, where the tanks are currently owned by a third party.

All 158 stations will be operated under a COCO (Company Owned-Company Operated) format, allowing the Divestment Business full control over pricing and margins.

(b) Investment plan

Following an on-going extensive investment programme, the Divestment Business network will have the following characteristics before Closing:

- Unmanned format and pricing on all sites.

- Standardized fuel offer, whereby all sites in the network will offer 95-octane gasoline, diesel and E85.
- COCO fuel business model implemented on all sites.

The ongoing investment programme will also introduce technical changes to enable an efficient operation of the sites:

- Tank optimization, where tank size and mix between qualities are adjusted to minimize distribution costs.
- Automatic tank gauging, to enable automatic and centralized ordering and delivery of product and stock control.
- Electronic price signs, to enable automatic and centralized pricing for each site.
- EMV[109] compliant card terminals on all stations.
- Surveillance tools for the remote monitoring of station operations.

These investments will result in the Divestment Business operating a highly centralised, highly automated and remotely monitored network of stations.

StatoilHydro's investment programme for the Divestment Business, which is currently being executed, covers the following areas: E85 installation, oil separators, automatic tank level gauge, optimized tank capacity, EMV card terminals, pump modernisation and price signs. The total investment costs are expected to be […][110]*. For details at station level, we refer to **Annex 1**.

StatoilHydro has already concluded a significant part of the planned investments. Under StatoilHydro's current investment plan all necessary investments will be completed by the end of 2008 apart from automatic price signs which will be implemented before the end of the First Divestiture Period.

The only investment required for the 40 JET stations will be the replacement of the payment card terminals with new EMV-compliant terminals.

(c) Description of supply, storage, transport, IT-support & daily operation/ maintenance arrangements

Supply and storage

With a well-supplied Swedish wholesale market for motor fuels, a competitive supply of product is readily available to the Divestment Business through supply agreements. Access to storage terminals is open and access to an efficient storage structure can be achieved through agreements with one or more suppliers. StatoilHydro will, in this context, ensure that the Divestment Business has a competitive access to both product and storage terminals, if so requested by the Purchaser.

---

109 EMV is a standard for interoperation of IC cards ("Chip cards") and IC capable POS terminals and ATM's, for authenticating credit and debit card payments. The name EMV comes from the initial letters of Europay, MasterCard and VISA, the three companies which originally cooperated to develop the standard.

110 […]*

StatoilHydro considers that the Divestment Business generates large enough volumes to obtain competitive terms from suppliers on the Swedish market and North West Europe ([…]*). Storage solutions are readily available in Sweden ([…]*).

However, until 31 December 2013, StatoilHydro will offer fuel supply for 95-octane and 98-octane gasoline and diesel to the Divestment Business on competitive normal commercial terms.[111] Supply will be on an "ex rack" basis ("ex-rack" meaning that the Divestment Business can pick up products at the truck filling rack) at StatoilHydro's depots […]* and at third party depots […]*. However, nothing shall restrict StatoilHydro's ability to renegotiate and/or terminate arrangements in relation to any such third party depot.

In case StatoilHydro renegotiates and/or terminates arrangements in relation to third party depots for the supply of its own stations, these arrangements will be extended to or terminated also for the Purchaser (as the case may be) for the supply of the stations belonging to the Divestment Business. In case of termination, StatoilHydro will find an alternative for its own volumes, which will also benefit the Purchaser.

Further, StatoilHydro will permit the Divestment Business to use on a throughput basis on competitive normal commercial terms until 31 December 2013, the StatoilHydro depots in […]* for 95-octane and 98-octane gasoline and diesel.

StatoilHydro will also use reasonable commercial endeavours to extend to the Divestment Business agreements with its own suppliers of E85. Alternatively, if StatoilHydro commences sourcing and distribution of E85 in its own system prior to Closing, it will supply the Divestment Business on competitive normal commercial terms. In either case, contracts for the supply of E85 will be for a period until 31 December 2013.

Provided and to the extent that StatoilHydro will supply the Divestment Business with fuel, StatoilHydro will also offer to provide the Divestment Business, on competitive normal commercial terms, arrangements to meet the latter's compulsory storage obligations under Swedish law for a period until 31 December 2013, if so required.

Finally, StatoilHydro will offer the Purchaser of the Divestment Business the option to buy JET Sweden's 50% shareholding in Norrköping Depå AB, a joint venture between StatoilHydro and JET Sweden, which owns and operates storage depots in Gävle and Norrköping.

---

[111] Competitive normal commercial terms are defined by reference to the normal arms-length conditions for fuel supply on the Swedish market. StatoilHydro both purchases and supplies retail motor fuels in Scandinavia including Sweden (where it has supply agreements with, inter alia, JET Sweden). The terms of the supply agreements are negotiated based on the value of the product delivered to a terminal and the costs associated with the throughput of the product in the terminal (the latter in the case of "Free on Truck" (or "ex-rack") agreements). This is standard for the industry as can be observed from the various supply agreements that have been furnished by COP. Product costs are very transparent because they are based on international oil market prices (i.e. Platts quotations). A location premium is applied to the Platts quotation to reflect specific logistic costs associated with deliveries to different depot locations. Throughput costs cover operating costs, depreciation and return on investment. As more companies can offer throughput, the general competition in the market means that a "market level" for throughput costs is established. These vary according to the size (total throughput) of the terminal.

Transport

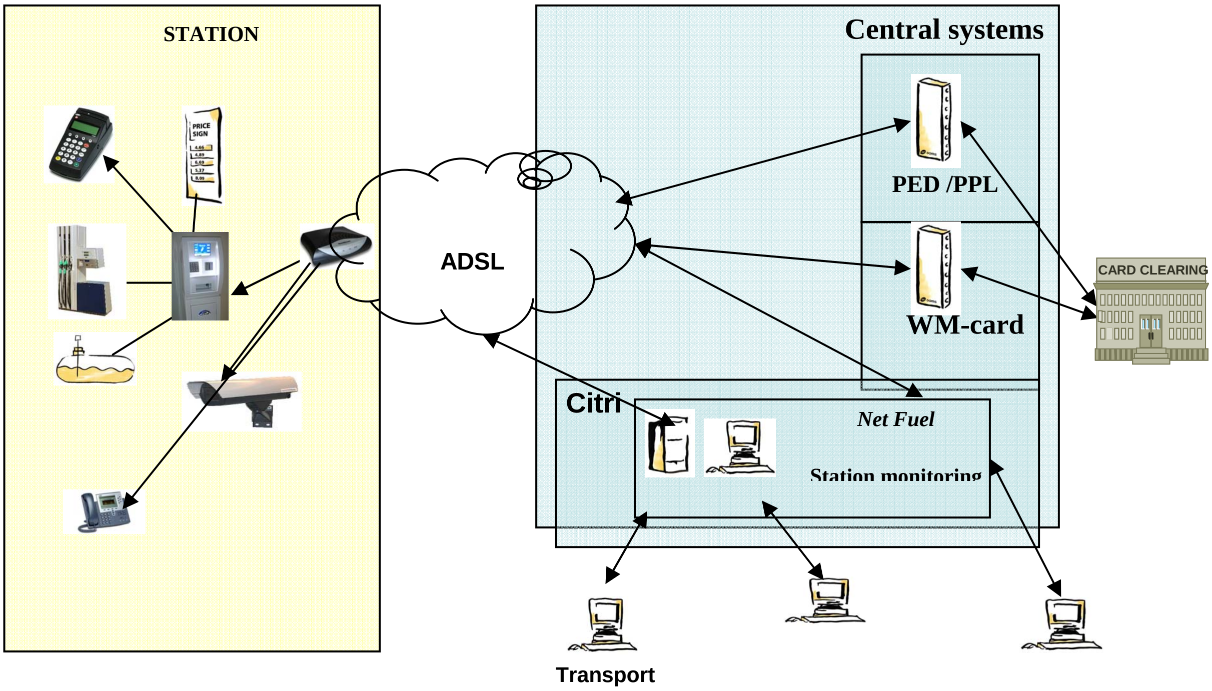
The distribution of fuel products from terminals to the stations, including the necessary transport planning, is fully outsourced to external suppliers. A full outsourcing is made possible by giving the logistics supplier access to the stations' automatic tank gauging data, allowing for deliveries as and when required. This setup, or similar setups, is already in widespread use in the industry and is fully feasible.

There are many transport companies active on the Swedish market which are able to provide such services: either on an exclusive basis with dedicated trucks bearing the brand of the retail motor fuels network operator, or on a shared basis with unbranded trucks supplying different network operators to minimize costs.

StatoilHydro will negotiate, for the benefit of the Divestment Business, relevant contracts with logistic operators, for the distribution of refined products to the Divestment Business' stations (where appropriate having consulted first with the Purchaser) until 31 December 2011.

IT-Support

NHO's current IT-platform will be made available to the Divestment Business. The current Hydro systems provide process support in all critical areas of the fuel value chain.



The equipment at the stations is part of the Divestment Business.

As from the date of adoption of the Decision StatoilHydro will ensure that the following central IT-systems, which are currently in use by NHO and are fully functional and operational, are made available to the Divestment Business under standard arms-length outsourcing arrangements under the supervision of the Monitoring Trustee.

- Card transaction handling system.
- Financial system including Human Resources.

- Data-warehouse.
- Pricing monitoring.

During the Divestiture Period, NHO will run, with the appropriate ring-fencing mechanisms, other back-office IT processes, systems and support services on behalf of both the Divestment Business and the Hydro stations not forming part of the Divestment Business. These functions are back office functions that can be, and often are, outsourced (whether within a corporate group or to a third party provider) in the ordinary course of business.

The ring-fencing mechanism within NHO of the stations belonging to the Divestment Business while the remaining activities in NHO are being terminated will be effected as follows:

[…]*.

[…]*.

Also, from the date of the adoption of the Decision, Newco will be under separate management consisting of […]* individuals as detailed below under 2 (f). The Hold Separate Manager will manage the business under the supervision of the Monitoring Trustee. He will not report to StatoilHydro or NHO. All commercial decisions, including pricing and marketing decisions will be made by the management of Newco without NHO's or StatoilHydro's involvement.

[…]*.

[…]*.

[…]*.

[…]*.

[…]*.

Upon Closing, depending on whether or not it has existing retail operations, the Purchaser of the remedy network will have the option either to integrate the Divestment Business with its own back-offices systems or to acquire the necessary Hydro support systems and personnel as part of the Divestment Business.

Daily operation/maintenance

The daily operation of the sites includes the following local activities:

- Cleaning.
- Minor repair and maintenance.
- Competitor price monitoring.

These activities will be carried out by independent subcontractors, as is already substantially the case for many of the existing Hydro sites and all JET sites. The work description of the subcontractors is standardized and will follow existing manuals and checklists to ensure safe operations and compliance with rules and regulations. The agreements by which subcontractors are tied to the Divestment Business are also standardized to minimize operational complexity. The subcontractors are generally responsible for a group (so-called "cluster") of stations, creating opportunities for economies of scale also for the subcontractor.

All relevant agreements will, to the extent necessary, be transferred to the Divestment Business before Closing.

(d) Volume projections

See **Annex 1** for volumes sold in 2005-2007.

All 158 stations offer 95-octane gasoline. In addition, […]* of the stations offer diesel and […]* of the stations offer E85. All 158 stations will offer all three fuel products.

[…]*.

In 2007, the 158 stations comprising the Divestment Business had an aggregate sales volume of [380-410]*million litres, resulting in an average throughput of [2-2.5]*million litres per site.

Following the replacement of the JET brand, a […]*% volume loss is expected on the 40 JET stations in the network. At the same time, the Divestment Business is expected to pick up a share of volume lost by StatoilHydro following the re-branding of the JET stations it will acquire. Also, the Divestment Business is expected to attract a share of the volume released from StatoilHydro's network restructuring efforts.

Through these changes, the Divestment Business is expected to have a total volume of [380-410]* million litres and an average throughput of [2.5-3]* million litres per site. These are significant high performance figures, outperforming most Swedish networks and well above the Swedish average, allowing (i) for a competitive spread of overhead cost; (ii) a strong negotiation position to achieve competitive terms and conditions for supply, storage and logistics; and (iii) very strong station and network efficiencies and economics, leading to a profitable business with the ability to compete on price.

The starting point for the volume projection is described in the table below:

	Gasoline	**Diesel**	**Total**
Hydro/Uno-X	[…]*	[…]*	[…]*
JET	[…]*	[…]*	[…]*
Total	[…]*	[…]*	[…]*
Re-branding loss Div. Bus.	[…]*	[…]*	[…]*
Re-branding gain from StatoilHydro	[…]*	[…]*	[…]*
Free volume from SH restructuring	[…]*	[…]*	[…]*
STARTING POINT	[…]*	[…]*	[…]*

These volumes do not take into account potential volume gains obtained by the Divestment Business due to its own competitive initiatives to grow market share. They also do not include volumes gains due to station closures by competitors pursuant to other ongoing and future restructuring efforts.

2. Following paragraph [1] of these Commitments, the Divestment Business includes, but is not limited to:

(a) The following main tangible assets:

-Stations: For further details on the 158 stations, we refer to **Annex 1**.

At site level, the following integrated IT-systems are available:

- Point-of-sales (POS) and card terminals.
- Automatic tank level gauge combined with automatic reordering system to ensure a high service level towards customers whilst maintaining low distribution costs.
- Automated monitoring of the site to allow remote operation and error management.
- Electronic price signs that are controlled remotely.

-Where, for certain Hydro sites, NHO currently owns (whether outright or through a head lease) the building housing non-fuel activities carried on by third parties, these buildings will be included in the Divestment Business, which will generate lease income for the Divestment Business.

(b) The following main intangible assets:

Brand

Upon request, StatoilHydro will offer to the Purchaser of the Divestment Business the Uno-X brand as part of the Divestment Business. In any event, appropriate transitional use arrangements will be put in place.

As regards the 40 JET stations which will be part of the Divestment Business, the “JET” trademark, brand and trade dress are and will remain the property of ConocoPhillips. However, the Divestment Business will, subject to the consent of ConocoPhillips (not to be unreasonably withheld), be permitted to use the “JET” trade mark, brand and trade dress for those 40 sites for a transitional period of up to […]* years from the Effective Date.

During the Divestiture Period, StatoilHydro will prepare the transition of the 40 JET sites to the Divestment Business’ POS and IT systems, allowing for a fast transition to the Purchaser’s brand of choice (which will be either the Uno-X brand, an existing brand of the Purchaser or a new brand selected by the Purchaser).

(c) The following main licences, permits and authorisations:

By Closing and to the extent necessary, StatoilHydro will ensure that all site permits and authorisations linked to the 118 Hydro stations are transferred to the Divestment Business. All site permits and authorisations linked to the 40 JET stations will be transferred to the Divestment Business by Closing.

(d) The following main contracts, agreements, leases, commitments and understandings:

StatoilHydro will ensure that all contracts for supply of products, terminal access and storage as well as contracts for fuel transportation to the filling stations are in place by […]*.

StatoilHydro will further ensure that the benefit of all leases and site maintenance agreements linked to the 118 Hydro stations is transferred to the Divestment Business by Closing. All leases and site maintenance agreements linked to the 40 JET stations will be transferred to the Divestment Business by Closing.

(e) The following customer, credit and other records:

All payment cards issued by the Divestment Business will be accepted for payment at the stations of the Divestment Business. All payment cards issued by NHO will be accepted for payment at the stations of the Divestment Business.

In addition, until their transfer to the Divestment Business' payment card system, customers holding a JET card will be able to use this card to pay at the terminals of the 40 JET stations. It will not possible, for technical reasons, to pay with the JET card at the JET stations once the JET POS system is replaced with the Divestment Business' POS system, although until then, the JET card will continue to be accepted. Any necessary back-office IT support will be provided either by JET Sweden (supported as appropriate by StatoilHydro and/or COP within the scope of the transitional services arrangements agreed by StatoilHydro and COP within the scope of the notified concentrations) and/or will be provided by the Purchaser.

(f) The following Personnel:

Given the high degree of automation made possible by the IT-platform, the single line of business (fuel sales over unmanned stations) and standardized business model, the Divestment Business will require only a small overhead organisation to support its site operations.

The Divestment Business will initially employ […]* FTEs (full time equivalents) with the following operational responsibilities:

General Manager:	[…]*
Pricing:	[…]*
Controlling:	[…]*
Field Managers:	[…]*
Marketing/Procurement coordination:	[…]*

The following […]* individuals from Hydro's current operations are considered to be Key Personnel for operating the Divestment Business:

[…]*

[…]* CV is enclosed in **Annex 2**.

All other functions are support functions, which can be outsourced without impact on the Divestment Business. These support functions include logistics, maintenance, IT, Information Services and Telecommunications and Finance. These services will be provided either through third-party outsourcing arrangements (logistics and maintenance) or through transitional support arrangements with the existing Hydro organization.

(g) Provision of support services post Closing

On a stand-alone greenfield basis, the Divestment Business would require an additional […]* FTE to carry out the IT, Information Services and Telecommunications and Finance services provided to the Divestment Business by NHO during the Divestiture Period, bringing the total FTE count of the Divestment Business to […]*.

Upon Closing, the Purchaser will be offered the option of integrating these support functions, as well as the underlying systems and personnel, from NHO. Alternatively, if he has existing retail operations, the Purchaser may decide to integrate the Divestment Business with his own back-office infrastructure, thus removing the need for a further transfer of Hydro systems and personnel to the Divestment Business. The Purchaser will therefore be able to operate the Divestment Business in the manner that best suits his needs and organization.

****

Appendix 1 (Schedule to Annex I)

[…]*

Appendix 2 (Schedule to Annex I)

[…]*

<u>Personal information</u>:

Date of birth: […]*

Nationality: […]*

Family status: […]*

<u>Education</u>:

[…]*

<u>Previous experience</u>:

[…]*

Annex II

Norway

Remedy Phase II

1 September 2008

Case M.4919 - StatoilHydro/ConocoPhillips

Revised Commitments to the European Commission

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No. 139/2004 (the **Merger Regulation**), StatoilHydro ASA (**StatoilHydro**) hereby provides the following Commitments (the **Commitments**) to enable the European Commission (the **Commission**) to declare the acquisition by StatoilHydro of ConocoPhillips' subsidiaries carrying on the retailing of motor fuels in Denmark, Norway and Sweden (**JET**) compatible with the common market and the functioning of the EEA Agreement by a decision pursuant to Article 8(2) of the Merger Regulation (the **Decision**).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations to the Decision, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by StatoilHydro, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business defined in Section B and the attached Schedule.

Divestiture Trustee: one or more natural or legal person(s), independent from StatoilHydro, who is approved by the Commission and appointed by StatoilHydro and who has received from StatoilHydro the exclusive mandate to sell the Divestment Business to a Purchaser at no minimum price.

Divestiture Trustee Mandate: the exclusive mandate granted by StatoilHydro to the Divestiture Trustee to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of completion of the acquisition by StatoilHydro of JET Norway.

First Divestiture Period: the period of […]* months from the Effective Date.

JET Norway: ConocoPhillips JET AS, a limited liability company under Norwegian law, with its registered office at CJ Hambros Plas 2D, c/o Simonsen Foyen Advokatfirma DA, N-0164 Oslo, Norway.

JET Sweden: ConocoPhillips Nordic AB, a limited liability company incorporated under the laws of Sweden, with its registered office at Isafjordsgatan 30C, SE-164 86 Stockholm, Sweden.

JET Denmark: ConocoPhillips Danmark A/S, a limited liability company incorporated under the laws of Denmark, with its registered office at Herstedostervej 27-29, DK-2620 Albertslund, Denmark.

JET Scandinavia: term referring collectively to JET Sweden, JET Denmark and JET Norway.

JET Scandinavia Hold Separate Manager: the person appointed by StatoilHydro to manage the day-to-day business of JET Scandinavia under the supervision of the Monitoring Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from StatoilHydro, who is approved by the Commission and appointed by StatoilHydro, and who has the duty to monitor StatoilHydro's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section E, paragraph 16.

StatoilHydro: StatoilHydro ASA, a public limited company under Norwegian law, listed on the Norwegian and New York stock exchanges, with its registered office at Forusbeen 50, N-4035 Stavanger, Norway.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of […]* months from the end of the First Divestiture Period.

Section B. The Divestment Business

Structure and definition of the Divestment Business

1. The Divestment Business is JET Norway, which owns and operates 40 "JET" branded unmanned stations in the South East of Norway. The legal and functional structure of JET Norway is described in the Schedule. The Divestment Business, described in more detail in the Schedule, unless otherwise stated in these remedy Commitments, includes:

(a) all tangible and intangible assets (including intellectual property rights) owned by JET Norway, which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

(b) all licences, permits and authorizations issued by any governmental organization to JET Norway required by the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customers, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "***Assets***");

(d) the Personnel;

(e) the benefit, if required by the Purchaser, of contracts for the supply of products and services, as detailed in the Schedule; and

(f) if required by the Purchaser, the Strömstad depot in Sweden, which is currently owned and operated by JET Sweden on behalf of JET Norway.

Section C. Commitment

Commitment to divest

2. In order to restore effective competition, StatoilHydro commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17. To carry out the divestiture, StatoilHydro commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If StatoilHydro has not entered into such an agreement at the end of the First Divestiture Period, StatoilHydro shall grant to the Divestiture Trustee the Divestiture Trustee Mandate to sell the Divestment Business in accordance with the procedure described in paragraph 33 within the Trustee Divestiture Period.

3. StatoilHydro shall be deemed to have complied with this commitment as referred to in paragraph 2 above if, by the end of the Trustee Divestiture Period, StatoilHydro has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms of that agreement in accordance with the procedure described in paragraph 17 and if the Closing of the sale of the Divestment Business takes place within a period not exceeding […]* months after the approval of the Purchaser and the terms of sale of that agreement by the Commission.

4. In order to maintain the structural effect of the Commitments, StatoilHydro shall, for a period of […]* years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market and the functioning of the EEA Agreement.

5. In order to continue the operations of the Divestment Business until Closing and, insofar as JET Norway is currently managed from JET Sweden and JET Denmark, on the Effective Date and until Closing, StatoilHydro will acquire ownership of 100% of the share capital of JET Scandinavia, but will not exercise control (as set out in Article 3 of the Merger Regulation) over that business. StatoilHydro will hold JET Scandinavia separately under the control of the Monitoring Trustee until Closing.

SECTION D. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, under the control of the Monitoring Trustee and any persons responsible for managing JET Scandinavia, StatoilHydro shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular StatoilHydro undertakes:

   (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of the activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available sufficient resources for the development of the Divestment Business on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage the Personnel to remain with the Divestment Business.

Hold-separate obligations of StatoilHydro

7. StatoilHydro commits, from the Effective Date until Closing, to hold JET Scandinavia separate from StatoilHydro itself and to ensure that the JET Scandinavia Hold Separate Manager has no involvement with StatoilHydro and vice-versa. StatoilHydro shall also ensure that the personnel of JET Scandinavia do not report to any individual outside JET Scandinavia.

8. StatoilHydro shall appoint a Monitoring Trustee in accordance with the provisions of Section F to carry out the functions specified in paragraph 30 below.

9. Until Closing, StatoilHydro shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct entity separate from StatoilHydro itself. StatoilHydro shall appoint the JET Scandinavia Hold Separate Manager, who shall be responsible for its management, under the supervision of the Monitoring Trustee. He shall manage JET Scandinavia independently and in the best interest of the business with a view to ensuring its continued economic viability and competitiveness and its independence from StatoilHydro itself.

10. To ensure that JET Scandinavia is held and managed as a separate entity, the Monitoring Trustee shall exercise StatoilHydro's rights as shareholder in JET

Scandinavia (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view of fulfilling StatoilHydro's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the boards of directors, who have been appointed on behalf of StatoilHydro or any Affiliated Undertaking. Upon request of the Monitoring Trustee, StatoilHydro shall cause such members of the boards of the three companies comprising JET Scandinavia to resign.

Ring-fencing

11. StatoilHydro shall implement all necessary measures to ensure that it does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to JET Scandinavia. StatoilHydro may obtain information relating to JET Scandinavia which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to StatoilHydro is required by law or to enable StatoilHydro to comply with any applicable law, regulation, rule of any stock exchange, or similar obligation.

Non-solicitation clause

12. StatoilHydro undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of […]* years after Closing.

Due Diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, StatoilHydro shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the JET Scandinavia personnel responsible for the management of JET Norway.

Reporting

14. StatoilHydro shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

15. StatoilHydro shall inform the Commission and the Monitoring Trustee, if applicable, on the preparation of the data room documentation and the due diligence process and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending any such memorandum out to potential purchasers.

SECTION E. THE PURCHASER

16. In order to ensure the immediate restoration of effective competitiveness, the Purchaser, in order to be approved by the Commission must:

(a) be independent of and unrelated to StatoilHydro;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with StatoilHydro and other competitors;

(c) neither to be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be unreasonably delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business; and

(d) not have had a share of more than 10% of the Norwegian market for the retail sale of motor fuels in 2007 (the before-mentioned criteria for the Purchaser are referred to hereafter as the **Purchaser Requirements**).

17. The final binding sale and purchase agreement shall be conditional on the Commission's approval of the Purchaser. When an agreement has been reached with a Purchaser, StatoilHydro shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. StatoilHydro must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

SECTION F. TRUSTEE

I. Provisions applicable to the Monitoring Trustee and the Divestiture Trustee

Qualifications of the Trustee

18. The Trustee shall be independent of StatoilHydro and JET Scandinavia, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by StatoilHydro in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal to appoint a Trustee

19. The proposal of StatoilHydro to appoint a Trustee shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 18 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

20. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, StatoilHydro shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, StatoilHydro shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by StatoilHydro

21. If all the proposed Trustees are rejected, StatoilHydro shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 and 20.

Trustee nominated by the Commission

22. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom StatoilHydro shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee

23. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or StatoilHydro, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Replacement, discharge and reappointment of the Trustee

24. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

(a) the Commission may, after hearing the Trustee, require StatoilHydro to replace the Trustee; or

(b) StatoilHydro, with the prior approval of the Commission, may replace the Trustee.

25. If the Trustee is removed according to paragraph 24, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure laid down in the present Section F.

26. Apart from the cases according to paragraph 24, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

Other common provisions

27. StatoilHydro shall indemnify the Trustee and its employees and agents (each an **Indemnified Party**) and hold each Indemnified Party harmless against any claim arising out of the Trustee's fulfilment of its mandate except if such claim(s) result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors. StatoilHydro hereby agrees that an Indemnified Party shall have no liability to StatoilHydro for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

28. At the expense of StatoilHydro, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to StatoilHydro's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Trustee mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should StatoilHydro refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard StatoilHydro. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 27 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served StatoilHydro during the Divestiture Period, if the Divestiture Trustee considers this in the best interest of an expedient sale.

II. <u>Provisions applicable to the Monitoring Trustee</u>

Proposal for a Monitoring Trustee

29. No later than one week after the Effective Date, StatoilHydro shall submit a list of one or more persons whom StatoilHydro proposes to appoint as the Monitoring Trustee to the Commission for approval.

Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by StatoilHydro with the conditions and obligations attached to the Decision. Equally the Monitoring Trustee shall oversee the management of JET Scandinavia with a view to ensuring its continued economic viability and competitiveness until Closing. To that end the Monitoring Trustee shall:

a. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of JET Scandinavia from StatoilHydro itself, in accordance with paragraphs 6 and 7 above;

b. supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraphs 9 and 10 of the Commitments;

c. in consultation with StatoilHydro, (i) determine all necessary measures to ensure that StatoilHydro does not after the Effective Date and until Closing obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to JET Scandinavia, and (ii) decide whether such information may be disclosed to StatoilHydro to carry out the divestiture of the Divestment Business or as required by law in accordance with paragraph 11 above;

d. monitor the separation of the Divestment Business from the rest of JET Scandinavia.

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations set forth in the Decision;

(iv) propose to StatoilHydro such measures as the Monitoring Trustee considers necessary to ensure StatoilHydro's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of JET Scandinavia and the non-disclosure of competitively sensitive information;

(v) review and assess potential Purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential Purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if applicable, the data room documentation, the information memorandum and the due diligence process, and (b) potential Purchasers are granted reasonable access to the personnel of JET Scandinavia that are responsible for the management of JET Norway;

(vi) provide to the Commission, sending StatoilHydro a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending StatoilHydro a non-confidential copy at the same time, if it concludes on reasonable grounds that StatoilHydro is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 17, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed Purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser.

III. Provisions applicable to the Divestiture Trustee

Appointment of the Divestiture Trustee

31. If a binding sale and purchase agreement has not been entered into one month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by StatoilHydro at that time or thereafter, StatoilHydro shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

Proposal by StatoilHydro

32. No later than one month before the end of the First Divestiture Period, StatoilHydro shall submit a list of one or more persons whom StatoilHydro proposes to appoint as Divestiture Trustee to the Commission approval.

Duties and obligations of the Divestiture Trustee

33. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 17. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement

such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall act in the best financial interests of StatoilHydro and subject to StatoilHydro's obligations set forth in the Decision and these Commitments.

34. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to StatoilHydro.

IV. Duties and obligations of StatoilHydro

35. StatoilHydro shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Divestment Business's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and StatoilHydro and the Divestment Business shall provide the Trustee upon request with copies of any document. StatoilHydro shall make available to the Trustee one or more offices on its premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

36. StatoilHydro shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. StatoilHydro shall provide and shall cause its advisors to provide the Monitoring Trustee, on his request, with the information submitted to potential Purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchasers in the due diligence process. StatoilHydro shall inform the Monitoring Trustee on possible Purchasers, submit a list of potential Purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

37. StatoilHydro shall grant or procure that Affiliated Undertakings grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, StatoilHydro shall cause the documents required for effecting the sale and the Closing to be duly executed.

SECTION G. REVIEW CLAUSE

38. The Commission may, where appropriate, in response to a request from StatoilHydro showing good cause and accompanied by a report from the Monitoring Trustee:

(i) grant an extension of the time periods applicable in relation to the Commitments, or

(ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings which compose the Commitments.

Where StatoilHydro seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall StatoilHydro be entitled to request an extension within the last month of any period.

1 September 2008

…………………………………………………………
John Ratliff Frédéric Louis
Duly authorized for and on behalf of StatoilHydro ASA

SCHEDULE of Annex II

1. The Divestment Business

In this schedule we describe: a) the Divestment Business; b) the supply and transport and daily operation/maintenance arrangements of the Divestment Business; c) the Divestment Business' current and projected retail motor fuel volumes and revenues.

a) The Divestment Business

The Divestment Business consists of 40 unmanned stations in the South East of Norway. Currently, the network of 40 stations is operated under the "JET" brand.

These 40 stations are pure unmanned stations. All the stations are directly operated by JET Norway.

JET Norway's 40 sites are either owned by it ([…]*) or leased from third parties ([…]*). The buildings and the fuel equipment on site, such as tanks, pumps and payment terminals, are all owned by JET Norway.

The Divestment Business' network has the following characteristics:

- Unmanned format and pricing on all sites.
- Standardized retail fuel offer, whereby all sites in the network offer 95-octane gasoline and diesel. JET Norway currently also offers 92-octane gasoline.
- COCO fuel business model implemented on all sites.

If required by the Purchaser, the Divestment Business will also include the Strömstad depot in Sweden, which is currently owned and operated by JET Sweden.

b) Description of supply, storage and transport and daily operation/maintenance arrangements

Supply and storage

The Divestment Business has no storage depots or terminals in Norway. JET Sweden operates a depot in Strömstad in Sweden, located close to the Norwegian border, which is […]* used to supply gasoline to stations operated by the Divestment Business. JET […]* acquires gasoline from Esso's Slagen refinery, […]*.

[…]*.

[…]*.

Fuel supply. […]*. However, to ensure supply and thereby make the Divestment Business more attractive for a Purchaser, StatoilHydro will offer the Divestment Business, including if applicable replacements of any closed stations in the same geographic area, the option to buy products (95-octane gasoline and diesel) on an ex-rack basis (ex-rack meaning that the Divestment Business can pick up products at the truck filling rack at the relevant terminal) from StatoilHydro on competitive normal commercial terms and conditions[112] until 31 December 2013. […]*).

In addition, StatoilHydro will offer the Divestment Business, again including replacements of any closed stations in the same geographic area, the option to buy up to 10,000 m^3 per year of 95-octane gasoline on an ex-rack basis from StatoilHydro on competitive normal commercial terms for delivery at the ExxonMobil depots at Tønsberg (Slagen) and Fredrikstad until 31 December 2013 ([…]*).

Compulsory storage. Provided and to the extent that StatoilHydro will supply the Divestment Business with fuel, StatoilHydro will also offer to provide the Divestment Business, on competitive normal commercial terms, arrangements to meet the latter's ompulsory storage obligations under Norwegian law until 31 December 2013, if so required.

Transport

The distribution of fuel products from the Strömstad and Slagen terminals to the JET Norway stations, including the necessary transport planning, is fully outsourced to external trucking companies. […]*.

[…]*, if required, StatoilHydro will offer to negotiate, for the benefit of the Divestment Business, relevant contracts with logistic operators, for the distribution of refined products to the Divestment Business' stations, until 31 December 2011.

Daily operation/maintenance

The daily operation of the sites includes activities which cannot be centralized:

- Cleaning
- Minor repair and maintenance
- Cash collection
- Competitor price monitoring

These activities will continue to be carried out by independent, self-employed contractors, known as "inspectors", in accordance with standardized work descriptions, set out in JET Norway's manuals and checklists and under the supervision of JET Norway's area managers. General maintenance and repair work is contracted to third party providers, […]*.

c) Volume and turnover (based on input from JET Norway)

All 40 JET Norway stations (the 40th station was opened in Oslo on 13 June 2008) offer 92 and 95 octane gasoline as well as diesel. In 2007, the Divestment Business' sales volume totalled [118-128]* million litres, of which […]* million litres was gasoline and […]* million litres was diesel, resulting in an average throughput of about [3-3.5]* million litres per site. Following the replacement of the JET brand, a […]*% volume loss is expected on the 40 JET

112 By "competitive normal commercial terms and conditions", SH means that a customer would have to pay a price to lift the product ex-rack, taking into account: the Rotterdam oil market price quoted by Platts, plus relevant location, quality and other premia (i.e. the CIF price for the products at the harbour of Oslo) and a volumetric fee for the use of the terminal (covering the operating costs for the storage facilities and truck rack; depreciation; and return on investment).

stations in the network. Total revenues were NOK […]*million (excluding excise duties and VAT).

Accordingly, the Divestment Business is expected to reach a total volume of [90-100]*million litres and an average throughput of [2-2.5]* million litres per site.

The starting point for the volume projection is described in the table below:

	Gasoline	**Diesel**	**Total**
JET	[…]*	[…]*	[…]*
Re-branding loss Div. Bus.	[…]*	[…]*	[…]*
STARTING POINT	[…]*	[…]*	[…]*

2. Following paragraph 1 of these Commitments, the Divestment Business includes, but is not limited to:

(a) The following main tangible assets:

<u>Stations</u>: For further details on the 40 stations, StatoilHydro refers to <u>**Annex 1**</u>.

<u>IT</u>: The Divestment Business will continue to use the same physical data network and telecommunications system used by JET Norway, which is outsourced to third party providers. Other than for a transitional period of up to […]*following completion of the notified concentration, it will not include the IT systems and services presently used by JET Norway that are provided by either third parties or other ConocoPhillips group companies on arm's length terms. Such IT systems and services will be procured by the Divestment Business itself.

On site level, the following integrated IT-systems are used:

- Point-of-sales (POS) and card terminals.
- Automatic tank level gauge combined with automatic reordering system to ensure a high service level towards customers whilst maintaining low distribution costs.
- Automated monitoring of the site to allow remote operation and error management.
- Electronic price signs that are controlled remotely.

(b) The following main intangible assets:

Brand

The JET brand is not being acquired by StatoilHydro (subject to a short-term transitional licence for a "running-down" period) and will therefore not form part of the Divestment Business at Closing. The "JET" trademark, brand and trade dress are and will remain property of ConocoPhillips.

However, StatoilHydro and ConocoPhillips will agree reasonable arrangements in respect of site branding (transitional licence of the "JET" trademark, brand and trade dress) and the use of the JET card for a maximum period of […]* years from the Effective Date.

(c) The following main licences, permits and authorisations:

The Divestment Business holds all necessary licences, permits and other authorisations required for the operation of retail filling stations.

(d) The following main contracts, agreements, leases, commitments and understandings:

JET Norway is already party to contracts for fuel supply, distribution logistics, site leases, telecommunications services and payments systems etc. These will remain with the Divestment Business.

(e) The following customer, credit and other records:

JET Norway issues a payment card, named "JET card" which can be used by customers to purchase fuel at JET stations in Denmark, Norway and Sweden. The "JET card" is simply a means of deferred payments (that is to say is a "pay later" card). […]*.

Details of these customers are owned by JET Norway and will pass automatically to the Purchaser. Interim arrangements for the continued use of the "JET card" for a transitional period will be made available to the Purchaser, to enable it to establish its own proprietary payment card. As noted above, ConocoPhillips will also agree reasonable arrangements for the use of the "JET" trademark and brand for a transitional period of up to […]* years. Thereafter, if the Purchaser wishes to offer a card similar to the "JET card", it will need to issue a new proprietary card to substitute the "JET card".

(f) The following Personnel:

Currently, JET Norway has only two employees, both area managers who work from home offices. Their main responsibilities are to manage all on-site activities and to lead the station "inspectors". These activities include marketing and promotion activities; pricing decisions; managing the station inspectors; managing station openings and closings; managing some technical issues; local Health Safety and Environment ("HSE") management; and liaison with landlords.

JET Norway is managed from JET Scandinavia's Stockholm office, with administrative support provided from both its Copenhagen and Stockholm offices (depending simply upon which office has staff available to perform the relevant services required by JET Norway).

All competitor price monitoring, cash collection and site cleaning is handled by subcontractors. These individuals are currently led and supervised by the two area managers. In particular, there are presently […]* station inspectors (all are self-employed under standard-form contracts with JET Norway) who monitor competitors' prices and generally look after the stations. Site maintenance and repair work is provided by third party contractors.

Given the high degree of automation made possible by the IT-platform, the single line of business (fuel sales over unmanned stations) and standardized business model, the Divestment Business will require only a small management and customer service organisation.

Prior to Closing, these functions will continue to be provided by JET Scandinavia from its offices in Copenhagen and/or Stockholm in accordance with these Commitments. At Closing, they will be assumed by the Purchaser, subject to possible short-term transitional arrangements.

****

Appendix 1 (Schedule of Annex II)

[…]*