

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 178/13/COL

of 30 April 2013

exempting the exploration and the extraction of crude oil and natural gas on the Norwegian Continental Shelf from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Norway)

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY")

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"),

HAVING REGARD to the Act referred to at point 4 of Annex XVI to the EEA Agreement laying down the procedures for the award of public contracts in the utilities sector (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors) ("Directive 2004/17/EC"), and in particular Article 30(1), 30(4) and 30(6) thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular Articles 1 and 3 of Protocol 1 thereto,

HAVING REGARD to the Decision of the Authority of 19 April 2012 empowering the Member with special responsibility for public procurement to take certain decisions in the field of public procurement (Decision No 136/12/COL),

AFTER Consulting the EFTA Public Procurement Committee,

Whereas:

I. FACTS

1. PROCEDURE

(1) By letter of 5 November 2012 ⁽¹⁾, and following pre-notification discussions, the Authority received a request from the Norwegian Government to adopt a decision establishing the applicability of Article 30(1)

⁽¹⁾ Received by the Authority on 6 November 2012 (Event No 652027).

of Directive 2004/17/EC to petroleum activities on the Norwegian Continental Shelf ("the NCS"). In a letter dated 25 January 2013, the Authority requested the Norwegian Government to submit additional information ⁽²⁾. The Norwegian Government submitted its reply to the Authority in a letter dated 15 February 2013 ⁽³⁾. The notification and the reply from the Norwegian Government were discussed in a telephone conference on 4 March 2013 ⁽⁴⁾. By letters from the Authority of 22 March 2013, the EFTA Public Procurement Committee was consulted and asked to provide its view by written procedure ⁽⁵⁾. Upon a count of the votes by its members, the EFTA Public Procurement Committee delivered a positive opinion on the Authority's draft decision on 16 April 2013 ⁽⁶⁾.

(2) The request by the Norwegian Government concerns the exploration and production of crude oil and natural gas on the NCS, including development (*i.e.*, the setting up of adequate infrastructure for future production, such as production platforms, pipelines, terminals etc). The Norwegian Government has in its request described three activities:

(a) the exploration for crude oil and natural gas;

(b) the production of crude oil; and

(c) the production of natural gas.

⁽²⁾ Event No 657306.

⁽³⁾ Received by the Authority on 19 February 2013 (Event No 663304).

⁽⁴⁾ Event No 665288.

⁽⁵⁾ Event No 666730, Event No 666722 and Event No 666680.

⁽⁶⁾ Event No 669171.

2. THE LEGAL FRAMEWORK

- (3) The intention behind Article 30(1) of Directive 2004/17/EC is to allow for an exemption to the requirements of the rules on public procurement in a situation where the participants on a market are operating in a competitive manner. Article 30(1) of the Directive provides that:

“Contracts intended to enable an activity mentioned in Articles 3 to 7 to be carried out shall not be subject to this Directive if, in the Member State in which it is performed, the activity is directly exposed to competition on markets to which access is not restricted.”

- (4) Article 30(1) of the Directive sets out two requirements which must both be met before the Authority can adopt a positive decision regarding a request for exemption under Article 30(4), taking into account Article 30(6), of the Directive.
- (5) The first requirement in Article 30(1) of Directive 2004/17/EC is that the activity must be taking place on a market to which access is not restricted. Article 30(3) of the Directive provides that “access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex XI”. Annex XI of the Directive lists several directives.
- (6) Among the directives listed in Annex XI is Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons⁽⁷⁾, which was incorporated into EEA law in 1995 and is referred to in point 12 of Annex IV to the EEA Agreement.
- (7) Also listed among the directives set out in Annex XI is Directive 98/30/EC. This Directive was replaced by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. The latter was incorporated into EEA law in 2005 and is referred to in point 23 of Annex IV to the EEA Agreement⁽⁸⁾.

⁽⁷⁾ OJ L 164, 30.6.1994, p. 3 and OJ L 79, 29.3.1996, p. 30 and incorporated into the EEA Agreement by Joint Committee Decision No 19/95 (OJ L 158, 8.7.1995, p. 40 and EEA Supplement No 25, 8.7.1995, p. 1) (“the Licensing Directive”).

⁽⁸⁾ OJ L 176, 15.7.2003, p. 57, as corrected by OJ L 16, 23.1.2004, p. 74 and incorporated into the EEA Agreement by Joint Committee Decision No 146/2005 (OJ L 53, 23.2.2006, p. 43 and EEA Supplement No 10, 23.2.2006, p. 17) (“the Gas Directive”). This Directive was replaced by Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94) but the latter has not yet been incorporated into EEA law.

- (8) Accordingly, access to the market can be deemed to be unrestricted if the Norwegian State has implemented and properly applied the Acts referred to in points 12 and 23 of Annex IV to the EEA Agreement, which correspond to Directive 94/22/EC and Directive 2003/55/EC respectively⁽⁹⁾.

- (9) The second requirement in Article 30(1) of the Directive 2004/17/EC is that the activity, in the EFTA State where it is performed, is directly exposed to competition. The question of whether an activity is directly exposed to competition is to be decided on the basis of “criteria that are in conformity with the EC Treaty on competition, such as the characteristics of the goods or services concerned, the existence of alternative goods or services, the prices and the actual or potential presence of more than one supplier of the goods or services in question”⁽¹⁰⁾.

- (10) The existence of direct exposure to competition is to be evaluated on the basis of various indicators, none of which is, *per se*, decisive. In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets⁽¹¹⁾. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. As the conditions vary for the different activities that are the subject of this Decision, a separate assessment is made for each relevant activity or market.

- (11) This Decision is made solely for the purpose of granting an exemption pursuant to Article 30 of Directive 2004/17/EC and is without prejudice to the application of the rules on competition.

3. THE NORWEGIAN LICENSING SYSTEM

- (12) The Norwegian Petroleum Act⁽¹²⁾ provides the underlying legal basis for the licensing system for petroleum activities on the NCS. The Petroleum Act and Petroleum Regulations regulate the award

⁽⁹⁾ See Section 5 below.

⁽¹⁰⁾ Article 30(2) of Directive 2004/17/EC.

⁽¹¹⁾ See also the Authority’s Decision of 22 May 2012 exempting the production and wholesale of electricity in Norway from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Decision No 189/12/COL, OJ L 287, 18.10.2012, p. 21 and EEA Supplement No 58, 18.10.2012, p. 14).

⁽¹²⁾ Act of 19 November 1996 No 72 relating to petroleum activities. (<http://www.npd.no/en/Regulations/-Acts/Petroleum-activities-act/>). The Hydrocarbons Licensing Directive 94/22/EC is implemented in the Norwegian Petroleum Act as of 1 September 1995 and in Regulations to the Act relating to petroleum (the Norwegian Regulation of 27 June 1997 No 653) (<http://www.npd.no/en/Regulations/Regulations/Petroleum-activities/>).

of licences to explore for and produce crude oil and natural gas on the NCS. The Norwegian Ministry of Petroleum and Energy announces the blocks for which companies can submit an application for a licence. The Norwegian King in Council grants the production licence. The granting of a production licence is made on the basis of factual and objective criteria⁽¹³⁾. Normally a production licence will be awarded to a group of companies, of which one company is appointed as the operator responsible for the day-to-day management of the licence.

- (13) In Norway, there are two types of licensing rounds: (i) the licensing rounds covering immature areas on the NCS (numbered licensing rounds); and (ii) the Awards in Predefined Areas (APA rounds) covering mature areas. The two types of licensing rounds are the same, apart from the way they are initiated. The APA licensing rounds are conducted every year and cover acreage on the NCS that is considered to be mature (*i.e.*, where the geology is well-known)⁽¹⁴⁾. Numbered licensing rounds are (on average) carried out every second year covering immature areas (*i.e.*, where the geology is little-known)⁽¹⁵⁾. The numbered licensing rounds are started by the Norwegian Ministry of Petroleum and Energy inviting companies active on the NCS to nominate areas (blocks) which they want to be included in the

⁽¹³⁾ See Sections 3-3 and 3-5 of the Norwegian Petroleum Act and Section 10 of the Norwegian Petroleum Regulation.

⁽¹⁴⁾ The criteria for mature areas are described in the white paper to the Norwegian Parliament - *An industry for the future - Norway's petroleum activities* (Meld. St. 28 (2010-2011) Report to the Norwegian Parliament (Storting), p. 88). The following criteria have been applied in expanding the APA area: (i) areas close to infrastructure (which includes both existing and planned infrastructure, with potential resources in the areas being regarded as time-critical); (ii) areas with an exploration history (which includes areas that have previously been awarded and relinquished, areas with known play models and areas situated between awarded and relinquished areas); and (iii) areas that border on existing predefined areas, but that have not been applied for in numbered licensing rounds (see <http://www.regjeringen.no/en/dep/oed/press-center/press-releases/2013/apa-2013-acreage-announcement.html?id=714569>). A total of 324 production licences have been awarded since the APA system was established in 2003 and a total of 32 discoveries have been made (Meld. St. 28 (2010-2011) Report to the Norwegian Parliament (Storting), p. 86 - 87).

⁽¹⁵⁾ The numbered licensing rounds are designed with a view towards areas where there is limited geological knowledge, and where stepwise exploration is expedient. Areas have been awarded through 21 numbered licensing rounds, with licences awarded in the 21st round in the spring of 2011 (the white paper - *An industry for the future - Norway's petroleum activities* (Meld. St. 28 (2010-2011) Report to the Norwegian Parliament (Storting), p. 21). Numbered licensing rounds include mainly frontier areas of the NCS where the potential for large discoveries is highest. The 22nd licensing round was initiated on 2 November 2011 with awards of new production licences planned during the spring of 2013 (<http://www.regjeringen.no/nb/dep/oed/-pressesenter/pressmeldinger/2011/initiates-22nd-licensing-round.html?id=661990>). Also see the publication by the Norwegian Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate - *Facts 2012 - The Norwegian Petroleum Sector*, Chapter 5 on *Exploration Activity*, p. 30 *et seq* (<http://www.npd.no/en/Publications/Facts/Facts-2012/Chapter-5/>).

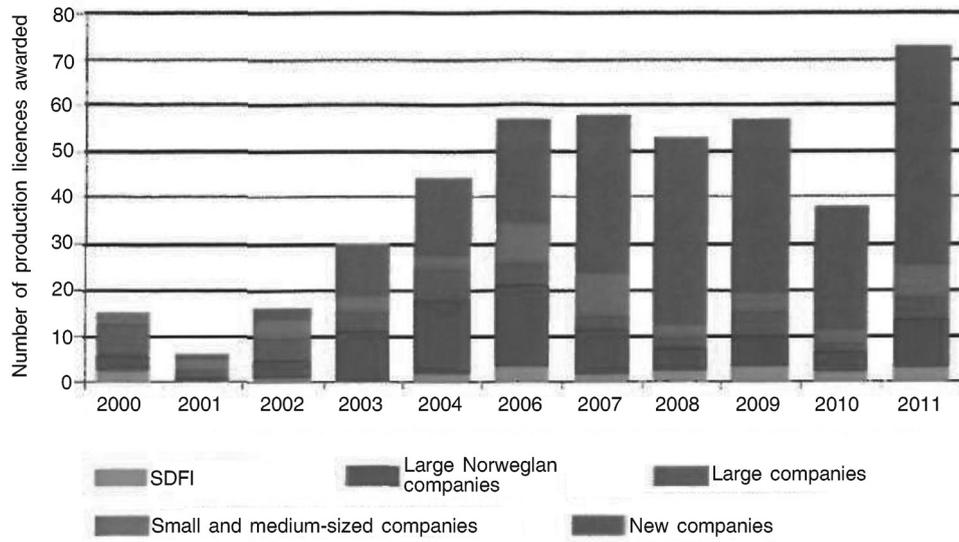
next licensing round. The legal conditions (laws, regulations, licensing documents) governing the two types of licensing rounds are exactly the same. The Norwegian Government has informed the Authority that exploration activities carried out under the two types of licensing rounds are also the same.

- (14) In licensing rounds, qualified oil companies apply for production licences, *i.e.*, the exclusive right to carry out petroleum activities on the NCS. As defined in Section 1-6 c) of the Norwegian Petroleum Act, petroleum activities include "all activities associated with subsea petroleum deposits, including exploration, exploration drilling, production, transportation, utilisation and decommissioning, including planning of such activities, but not including, however, transport of petroleum in bulk by ship". Consequently, in licensing rounds, companies apply for the exclusive right to explore for and produce any crude oil and natural gas that may be discovered in the area covered by the production licence.
- (15) When a discovery of crude oil and/or natural gas is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation ("PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval⁽¹⁶⁾. The approval of the PDO gives the licensees the exclusive right to start development and, subsequently, production. Produced petroleum becomes the property of the individual licensee.
- (16) The companies which are licensees on the NCS range from major international oil companies to very small oil companies, many of which have been new entrants on the NCS during approximately the last 10 years.
- (17) The tables below are submitted by the Norwegian Government and show activities on the NCS in terms of awarded new production licences, awarded acreage and number of companies on the NCS⁽¹⁷⁾.

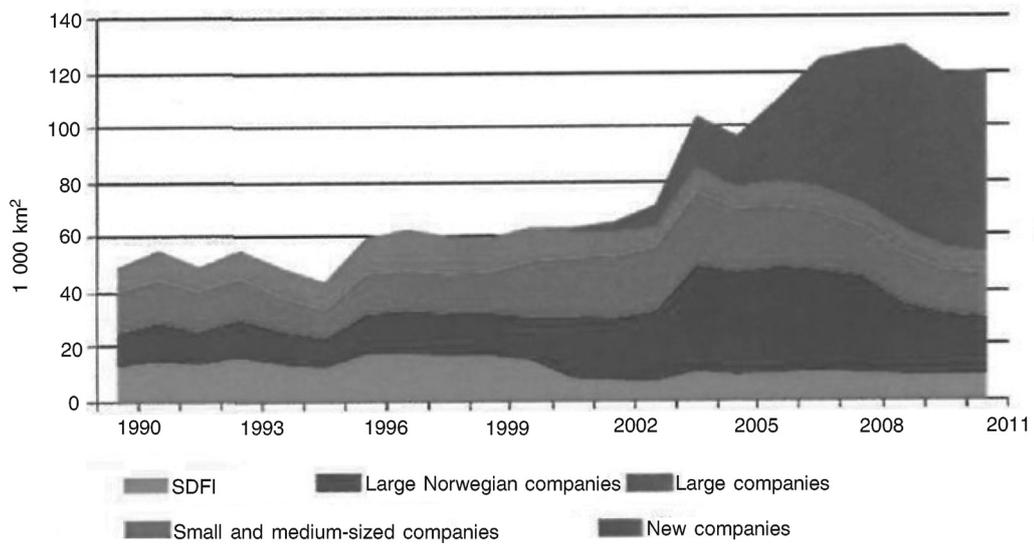
⁽¹⁶⁾ Cf. Section 4-2 of the Norwegian Petroleum Act.

⁽¹⁷⁾ SDFI in the first two tables refers to the Norwegian State's Direct Financial Interest. The Norwegian State has large holdings in oil and gas licences on the NCS through SDFI. The SDFI portfolio is managed by the state-owned company Petoro AS (www.petoro.no).

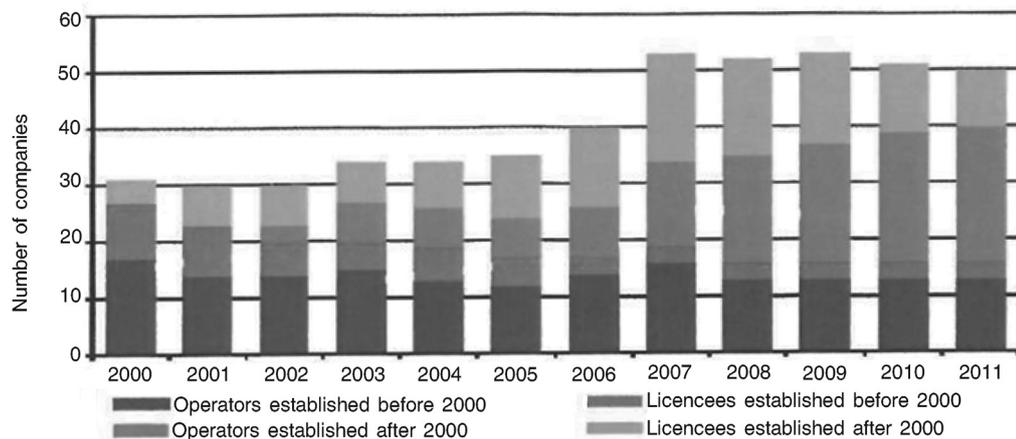
Awarded new licences:



Awarded acreage:



Number of companies on the NCS:



II. ASSESSMENT

4. THE ACTIVITIES COVERED BY THIS DECISION

- (18) The Norwegian Government's request for an exemption under Article 30 of directive 2004/17/EC covers three separate activities on the NCS: (a) the exploration of crude oil and natural gas; (b) the production of crude oil; and (c) the production of natural gas. The Authority has examined the three activities separately⁽¹⁸⁾.
- (19) "Production" will for the purposes of this Decision be taken to include "development" (*i.e.*, the setting up of adequate infrastructure for production, such as oil platforms, pipelines, terminals, etc). The transportation of natural gas from the NCS to the market through the upstream pipeline network is not part of this Decision.

5. ACCESS TO THE MARKET(S)

- (20) Directive 94/22/EC (the Licensing Directive) was incorporated in point 12 of Annex IV in the EEA Agreement by a Joint Committee Decision No 19/1995 which entered into force on 1 September 1995.

⁽¹⁸⁾ This is in line with the practice of the European Commission in merger decisions and in its decisions granting an exemption under Article 30 of Directive 2004/17/EC. See in particular the European Commission Decision of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 – *Exxon/Mobil*); Commission Decision of 29 September 1999 declaring a concentration to be compatible with the common market and the EEA Agreement (Case IV/M.1532 – *BP Amoco/Arco*); Commission Decision of 5 July 1999 declaring a concentration compatible with the common market and the EEA Agreement (COMP/M.1573 – *Norsk Hydro/Saga*), Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market and the EEA Agreement (Case No IV/M.4545 – *STATOIL/HYDRO*); Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 – *KAZMUNAIGAZ/ROMPETROL*), and Commission Decision of 21 August 2009 declaring a concentration compatible with the common market (Case No COMP/M.5585 – *Centrica/Venture* production). See also Commission Implementing Decision of 28 July 2011 exempting exploration for oil and gas and exploitation of oil in Denmark excluding Greenland and the Faroe Islands from the application of Directive 2004/17/EC (OJ L 197, 29.7.2011, p. 20); Commission Implementing Decision of 24 June 2011 exempting exploration for oil and gas and exploitation of oil in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 166, 25.6.2011, p. 28); Commission Implementing Decision of 29 March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 84, 31.3.2010, p. 52), and Commission Implementing Decision exempting exploration for and exploitation of oil and gas in the Netherlands from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 181, 14.7.2009, p. 53).

- (21) The Norwegian Government notified the Authority of its transposition of this Directive on 18 March 1996. A conformity assessment was performed by the Authority, following which Norway made a number of modifications to its legislation. After these modifications were carried out, the Authority took the view that Norway had properly implemented the Licensing Directive.
- (22) Directive 2003/55/EC (the Gas Directive) was incorporated into the EEA Agreement in point 23 by the Joint Committee Decision No 146/2005/EC on 2 December 2005. The Directive entered into force for the EEA EFTA States on 1 June 2007.
- (23) The Norwegian Government notified partial implementation of the Gas Directive on 4 June 2007 and full implementation on 19 February 2008. A conformity assessment was likewise carried out by the Authority for this Directive. Following a number of modifications to the Norwegian national legislation, the Authority took the view that Norway had properly implemented the Gas Directive.
- (24) In the light of the information presented in this Section, and for the present purposes, it appears that the Norwegian State has implemented and properly applied the Acts referred to in points 12 and 23 of Annex IV to the EEA Agreement, which correspond to Directive 94/22/EC and Directive 2003/55/EC respectively.
- (25) Consequently, and in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC, access to the market should be deemed not to be restricted on the territory of Norway, including the NCS.

6. EXPOSURE TO COMPETITION

- (26) As explained above, the Authority takes the view that it is necessary to examine whether the sectors concerned are directly exposed to competition. To this end, it has examined the evidence provided by the Norwegian Government and supplemented with evidence available in the public sphere where needed.

6.1. Exploration of crude oil and natural gas

6.1.1. Relevant market

- (27) Exploration of crude oil and natural gas consists in finding new reserves of hydrocarbon resources. Production encompasses both the setting up of adequate infrastructures for the production and exploitation of the resources. Exploration for crude oil and natural gas constitutes one relevant product market separate from the markets for production of crude oil and natural gas. This definition is based on the fact that it is not possible from the outset to determine whether the exploration will result in any discovery of crude oil

or natural gas. The Norwegian Government has confirmed that this applies both to the numbered licensing rounds and the APA licensing rounds. This market definition is also in line with the practice of the European Commission ⁽¹⁹⁾.

- (28) The exploration of immature and mature areas is carried out by the same type of companies and the activities rely on the same type of technology (*i.e.*, irrespective of the type of licensing round). Even though the geology is better known in the APA licensing rounds, the oil companies have no exact knowledge of the existence of petroleum, or whether a possible discovery may contain oil or gas or both. The Authority therefore finds that the relevant market is the exploration of crude oil and natural gas, which includes exploration activities carried out under both the numbered licensing rounds and the APA licensing rounds.
- (29) The companies engaged in exploration activities do not tend to limit their activities to a particular geographical area. Rather, most of the companies are present on a global level. The European Commission has in its decisions consistently held that the geographical scope of the exploration market is worldwide ⁽²⁰⁾. The Norwegian Government agrees with the Commission's geographical market definition. The Authority finds that the relevant geographical market is worldwide.

6.1.2. Direct exposure to competition

- (30) During the period 2011 – 2013, about 50 companies have been granted status as a licensee in production licences and consequently participate in exploration activities on the NCS ⁽²¹⁾.
- (31) The market shares of operators active in exploration are typically measured by reference to two variables: proven reserves and expected production ⁽²²⁾.
- (32) The worldwide proven reserves of oil in 2011 amounted to 1 652,6 billion barrels and the corresponding figure for natural gas was 208,4 trillion cubic metres, or

⁽¹⁹⁾ See the European Commission Decision of 23 January 2003 declaring a concentration compatible with the common market (Case No COMP/M.3052 – ENI/FORTUM GAS), Case No IV/M.1383 – Exxon/Mobil, and the European Commission Implementing Decisions concerning Denmark, Italy, England, Wales, Scotland and the Netherlands (see footnote 18 above).

⁽²⁰⁾ See, *e.g.*, Case No COMP/M.3052 – ENI/FORTUM GAS (paragraph 13) and Case No COMP/M.4545 – STATOIL/HYDRO (paragraph 7) (see footnote 18 above).

⁽²¹⁾ The number covers both production licences in numbered licensing rounds and APA-licences (*cf.* Event No 663313, p. 1-20).

⁽²²⁾ See *e.g.*, the European Commission Decision in Exxon/Mobil (paragraphs 25 and 27) (footnote 18 above).

approximately 1 310,8 billion barrels of oil equivalents⁽²³⁾. At the end of 2011, the proven reserves of oil in Norway amounted to 6,9 thousand million barrels, representing 0,4 % of the world reserves⁽²⁴⁾. The proven reserves of natural gas in Norway in 2011 amounted to 2,1 trillion cubic metres, representing 1 % of the world reserves⁽²⁵⁾. None of the five largest companies active on the NCS has a worldwide share of proven reserves exceeding 1 %⁽²⁶⁾.

- (33) The Norwegian Government does not possess information on the worldwide market shares of the five largest companies on the NCS measured in terms of expected production. However, it is reasonable to assume that there is a direct correlation between proven reserves of crude oil and natural gas and expected future production⁽²⁷⁾. In the light of the available information, the worldwide market shares of the largest companies on the NCS measured in terms of expected production is not likely, in any event, to lead to any change in the Authority's assessment.
- (34) In addition, the Authority has considered information on the number of applications for licensing rounds on the NCS and new entrants on the NCS. Figures received from the Norwegian Government on the award of licences in the three last licensing rounds on the NCS (held in 2011 – 2012) show that the number of applications have been up to nine companies for each announced licence. In the period from 2008 – 2012, 13 new entrants were awarded a production licence on the NCS. Thus, the number of companies being awarded a licence on the NCS is considerable⁽²⁸⁾.
- (35) On the basis of the elements above, the degree of concentration on the worldwide market for exploration of crude oil and natural gas must be characterised as low. It is likely that companies active in this market are subject to considerable competitive pressure. There is nothing to indicate that the sector is not functioning in a market-driven fashion. The Authority therefore concludes that the market for exploration of crude oil and natural gas is directly exposed to competition within the meaning of Directive 2004/17/EC.

⁽²³⁾ See the June 2012 BP Statistical Review of World Energy ("the BP Statistics"), at p. 6. (http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2011/STAGING/local_assets/pdf/statistical_review_of_world_energy_full_report_2012.pdf).

⁽²⁴⁾ See the BP Statistics, p. 6.

⁽²⁵⁾ See the BP Statistics, p. 20.

⁽²⁶⁾ Cf. the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 22).

⁽²⁷⁾ See e.g., the European Commission Implementing Decision concerning Denmark (see footnote 18 above) and the Commission's Implementing Decision concerning Italy (see footnote 18 above).

⁽²⁸⁾ See also the publication by the Norwegian Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate – *Facts 2012 – The Norwegian Petroleum Sector*, Chapter 5 on *Player scenario and activity*, p. 33 – 35 (<http://www.npd.no/en/Publications/Facts/Facts-2012/Chapter-5/>).

6.2. Production of crude oil

6.2.1. Relevant market

- (36) Crude oil is a global commodity and its price is determined by supply and demand on a worldwide basis. According to the established practice of the European Commission⁽²⁹⁾, the development and production of crude oil is a separate product market, the geographical scope of which is worldwide. The Norwegian Government agrees with this market definition⁽³⁰⁾. The Authority maintains the same market definition for the purposes of this Decision.

6.2.2. Direct exposure to competition

- (37) When a discovery of crude oil (or natural gas) is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation (a "PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval. Fields on the NCS that are primarily producing oil⁽³¹⁾ and for which a PDO has been submitted and approved during the last five years are as follows:

Year	Description (Field name and licence)	Awarded to
2008	Morvin, PL134B	Statoil Petroleum Eni Norge Total E&P Norge
2009	Goliat, PL229	Eni Norge Statoil Petroleum
2011	Knarr, PL373S	BG Norge Idemitsu Petroleum Norge Wintershall Norge RWE Dea Norge
2011	Ekofisk Sør, Eldfisk II, PL	ConocoPhillips Total E&P Norge Eni Norge Statoil Petroleum Petoro AS
2011	Vigdis nordøst, PL089	Statoil Petroleum Petoro AS ExxonMobil E&P Norway Idemitsu Petroleum Norge Total E&P Norge RWE Dea Norge

⁽²⁹⁾ See footnote 18 above.

⁽³⁰⁾ However, given that the majority of the fields on the NCS contain both oil and gas, the Norwegian Government has expressed that the joint production of oil and gas on the fields makes it impossible to distinguish between the two within the framework of Directive 2004/17/EC.

⁽³¹⁾ As fields contain both oil and gas, the table in this Section 6.2 contains the fields that are primarily producing oil. The fields that are primarily producing gas are listed in Section 6.3 below.

Year	Description (Field name and licence)	Awarded to
2011	Stjerne, part of Oseberg Sør PL079, PL104	Statoil Petroleum Petoro AS Total E&P Norge ConocoPhillips
2011	Hyme, PL348	Statoil Petroleum GDF Suez E&P Norge Core Energy E.ON E&P Norge Faroe Petroleum Norge VNG Norge
2011	Brynhild, PL148	Lundin Norway Talisman Energy Norway
2012	Jette, PL027C, PL169C, PL504	Det norske oljeselskap Petoro AS
2012	Skuld, PL128	Statoil Petroleum Petoro AS Eni Norge
2012	Edvard Grieg, PL338	Lundin Norway Wintershall Norge OMV Norge
2012	Bøyla, PL340	Marathon Oil Norge ConocoPhillips Lundin Norway

Year	Description (Field name and licence)	Awarded to
2012	Svalin, PL169	Statoil Petroleum Petoro AS ExxonMobil E&P Norway

(38) Thus, PDOs for the production of oil covering in total 20 companies have been accepted in the period from 2008 – 2012. Moreover, a PDO covering three new market entrants was accepted by the Ministry of Petroleum and Energy in 2010 ⁽³²⁾.

(39) Apart from the Norwegian state-owned companies, the list shows that the licensees are large oil companies as well as smaller companies. The Norwegian Government submits that most of the oil companies on the NCS are part of corporations with a diversified global business portfolio. Produced petroleum is therefore to a considerable extent sold to associated companies. However, more than half of the production is sold in the spot market. The figure below shows the volume of sale of crude oil in 2009 from the NCS.

Volume of sale of crude oil in 2009 from the NCS:

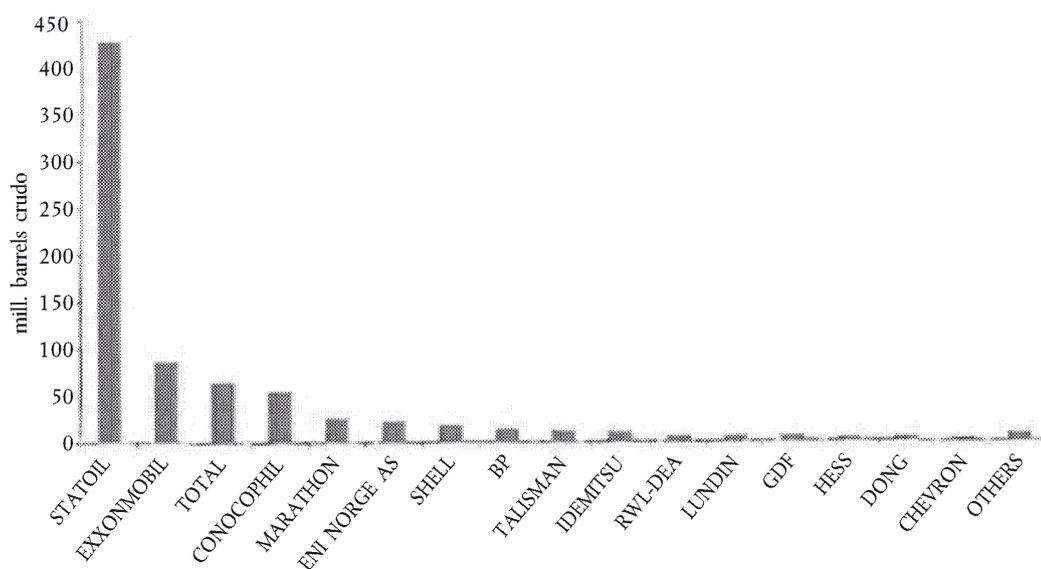


Figure. Sellers of Norwegian crude oil in 2009. The category Others consists of Altinex Oil, Bayerngas, Ruhrgas, Dana, Wintershall, Det Norske Oljeselskap, VNG, Revus Energy, Endeavour and EADS (MPE).

⁽³²⁾ See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 25).

- (40) The total daily production of oil worldwide in 2011 amounted to 83 576 thousand barrels. In 2011, a total of 2 039 thousand barrels per day were produced in Norway. This amounted to 2,3 % of worldwide production ⁽³³⁾.
- (41) In terms of production of crude oil on the NCS, Statoil accounted for the highest share in 2011. Other producers on the NCS included large international oil companies such as ExxonMobil, Total, ConocoPhillips, Marathon, Shell, BP and Eni. None of these players had a market share on the worldwide market for the production of oil in 2011 exceeding 3 % ⁽³⁴⁾. The degree of concentration in the relevant market as a whole was therefore low.
- (42) The European Commission has in its decisions under Directive 2004/17/EC considered that the globalised market of the production of oil is characterised by strong competition among a number of players ⁽³⁵⁾. There are no indications that this should have changed during recent years.
- (43) In the light of the elements above, the Authority concludes that there is nothing to indicate that the sector is not functioning in a market-driven fashion, and therefore, that the market for development and production of crude oil is directly exposed to competition within the meaning of Directive 2004/17/EC.

6.3. Production of natural gas

6.3.1. Relevant market

- (44) The market for the development, production and wholesale of gas has been examined by the European Commission under the EU Merger Regulation ⁽³⁶⁾ in a number of decisions in which it has considered that there is one market for the upstream supply of gas (comprising also the development and production of gas) to customers in the EEA (*i.e.* gas produced at the gas fields and sold to customers – including the national incumbents – in the EEA) ⁽³⁷⁾.

⁽³³⁾ See the BP Statistics, p. 8.

⁽³⁴⁾ Cf. the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 26).

⁽³⁵⁾ See the European Commission Implementing Decision concerning Denmark (paragraph 16) (footnote 18 above). Also see the Commission Implementing Decision concerning Italy (paragraph 16); the Commission Implementing Decision concerning England, Scotland and Wales (paragraph 16), and the Commission Implementing Decision concerning the Netherlands (paragraph 12) (see footnote 18 above).

⁽³⁶⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), (OJ L 24, 29.01.2004, p. 1). Incorporated into the EEA Agreement in Annex XIV, Chapter A, point 1 by Decision No 78/2004 (OJ No L 219, 19.6.2004, p. 13 and EEA Supplement No 32, 19.6.2004, p. 1).

⁽³⁷⁾ See Case No IV/M.4545 – *STATOIL/HYDRO* (paragraph 9) (see footnote 18 above).

LNG versus piped gas

- (45) Natural gas can be transported through up-stream gas pipelines or by vessels in the form of Liquefied Natural Gas ("LNG"). Norway's gas export for 2012 was approximately 112 billion cubic meters, of which 107 billion cubic meters was piped gas and 5 billion cubic meters was shipped as LNG ⁽³⁸⁾.
- (46) The Norwegian Government submits that LNG supplies are substitutable and compete directly with piped gas. Once the LNG is regasified it can enter the natural gas pipeline grid interchangeably with the gas that is supplied through pipelines from the upstream fields. Zeebrugge in Belgium is mentioned as an example: once the piped gas from the NCS has passed through the landing terminal and the LNG has been regasified at Zeebrugge LNG terminal, both sources of gas are completely substitutable. Although regasification infrastructure is not present in all EEA States, regasification capacity has been growing strongly over the recent years. Regasification capacity in the EEA is approaching 200 billion cubic metres. With the expansion of the pipeline network, LNG is becoming available to an increasing number of EEA customers.
- (47) The European Commission has in recent decisions left open the question whether LNG supplied gas should be distinguished from supplies of piped gas ⁽³⁹⁾.
- (48) For the purpose of the present Decision, the Authority finds that the question of whether a distinction should be made between piped gas and LNG can likewise be left open.

High Calorific Value versus Low Calorific Value

- (49) Downstream there are separate networks in place for the distribution of HCV gas and LCV gas and end-users are connected to the appropriate grid for their supply. HCV gas can be converted to LCV gas and *vice versa*. Norwegian gas producers supply gas of the HCV type.
- (50) The Norwegian Government submits that the level of substitutability between LCV gas and HCV gas should imply that these products fall within the same gas supply market from an upstream perspective. It is also submitted that the supply of LCV gas make up a relatively small part of the total supply of gas to the EEA: some 10 %.

⁽³⁸⁾ See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 33).

⁽³⁹⁾ See the European Commission Decision of 16 May 2012 declaring a concentration compatible with the common market and the EEA Agreement Case No COMP/M.6477 – *BP/CHEVRON/ENI/SON-ANGOL/TOTAL/JV* (paragraph 19). Also see Case No IV/M.4545 – *STATOIL/HYDRO* (paragraph 12); the Commission Implementing Decision concerning the Netherlands (paragraph 13), and the Commission's Implementing Decision concerning England, Scotland and Wales (paragraph 15) (see footnote 18 above).

- (51) For the purpose of the present Decision, the Authority finds that the question of whether a distinction should be made between HCV gas and LCV gas can be left open.

Conclusion on product market definition

- (52) With respect to the product market definition, for the purposes of this Decision, the Authority considers that there is one market for the upstream supply of gas (comprising also the development and production of gas). The questions whether LNG or LCV gas are included in the relevant product market are immaterial to the outcome of this Decision.

Geographical scope

- (53) The Norwegian Government submits that the three gas market directives have created a liberalised and integrated natural gas market in North-West Europe. The EU aims to fully integrate markets by 2014. With a single market for gas the Norwegian Government takes the view that it is not relevant to consider the market shares for individual EEA States. Once the gas has reached the border of the European internal market, it is submitted, it will flow freely to where it is needed according to the sources of supply and demand.
- (54) Of the pipeline export of gas from the NCS, some 70 % was transported to receiving terminals in Germany and the UK, the remaining share to terminals in Belgium and France. Pipeline gas from Norway is sold via pipeline connections and swap-agreements to an additional number of EEA States: more than 10 EEA States in total. Of the LNG production from the NCS, some two-thirds has historically been sold to the EEA. This means that almost all Norwegian gas is exported to the EEA.
- (55) Furthermore, the Norwegian Government submits that gas buyers in the EEA have a number of different supply sources available. These include both gas from the EU (typically Denmark, Netherlands, and the UK) or from neighbouring countries (typically Russia, Algeria, and Libya in addition to Norway) or from countries further afield (for example, the Middle East countries or Nigeria, in the form of LNG).
- (56) The Norwegian Government also submits that hubs both in the UK and on the European continent are increasingly liquid and price formation on the different hubs show that a considerable level of integration has been reached.
- (57) With respect to the geographic market definition, previous European Commission Decisions under the EU Merger Regulation have concluded that it most likely comprises the EEA, plus Russian and Algerian gas imports, but has left open the geographic market defi-

inition. In the decision on the merger between Statoil and Hydro the Commission did not find it necessary to decide whether the appropriate relevant geographic area to be considered was: (i) the EEA, (ii) an area comprising those EEA countries in which gas from the NCS is sold (directly by pipelines or via swaps) or (iii) each individual country in which the parties sell gas⁽⁴⁰⁾. Regardless of the geographic definition considered, that concentration would not give rise to competitive concerns in the market for upstream supply of gas.

- (58) For the purpose of the present Decision, and for the reasons set out below, the Authority finds that it is not necessary to decide on the exact scope of the geographical market for natural gas. Under any reasonable geographic market delineation the Authority holds that the sector concerned is directly exposed to competition.

6.3.2. Direct exposure to competition

- (59) When a discovery of natural gas (or crude oil) is made, the licensees are, if they decide to develop the field, obliged to submit a Plan for Development and Operation (a "PDO") of the field to the Norwegian Ministry of Petroleum and Energy for approval. The fields that are primarily producing gas on the NCS⁽⁴¹⁾, and for which a PDO has been submitted and approved the last few years, are as follows:

Year	Description (Field name and licence)	Awarded to
2008	Yttergryta, PL062	Statoil Petroleum Total E&P Norge Petoro AS Eni Norge
2008	Troll redevelopment, PL054, PL085, PL085C	Petoro AS Statoil Petroleum Norske Shell Total E&P Norge ConocoPhillips
2009	Oselvar, PL274	DONG E&P Norge Bayerngas Norge Noreco Norway
2010	Trym, PL147	Bayerngas Norge DONG E&P Norge
2010	Gudrun, PL025	Statoil Petroleum GDF SUEZ E&P Norge

⁽⁴⁰⁾ Case No IV/M.4545 – STATOIL/HYDRO, paragraph 16 (footnote 18 above).

⁽⁴¹⁾ As fields on the NCS contain both oil and gas, the table in this Section 6.3 contains the fields that are primarily producing gas. The fields that are primarily producing oil are listed in Section 6.2 above.

Year	Description (Field name and licence)	Awarded to
2010	Marulk, PL122	Statoil Petroleum DONG E&P Norge Eni Norge
2010	Gaupe, PL292	BG Norge Lundin Norway
2011	Valemon, PL050, PL050B, PL050C, PL050D, PL193B, PL193D	Statoil Petroleum Petoro AS Centrica Resources Norge Enterprise Oil Norge
2011	Visund, Sør, PL120	Statoil Petroleum Petoro AS ConocoPhillips Total E&P Norge
2012	Åsgard subsea compression	Petoro AS Statoil Petroleum Eni Norge Total E&P Norge ExxonMobil E&P Norway
2011	Atla, PL102C	Total E&P Norge Petoro AS Centrica Resources Norge Det norske olje- selskap
2012	Martin Linge, PL040, PL043	Total E&P Norge Petoro AS Statoil Petroleum

(60) PDOs for the production of gas covering in total 14 companies have been accepted during the period from 2008 – 2012. PDOs covering three new entrants have been accepted in the period from 2009 – 2011 ⁽⁴²⁾. More than 25 companies on the NCS export gas to the EEA ⁽⁴³⁾.

(61) In 2011, the production of gas in Norway amounted to 101,4 billion cubic meters representing 3,1 % of the world-wide production ⁽⁴⁴⁾. More than 95 % of the production on the NCS is exported to the EEA via gas pipelines to six landing points in four countries (the UK, Germany, Belgium, and France) ⁽⁴⁵⁾. Approximately 1,4 billion cubic meters (less than 2 %) of the gas produced on the NCS was consumed domestically in Norway.

⁽⁴²⁾ See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 28).

⁽⁴³⁾ Cf. the Norwegian Government's notification to the Authority dated 5 November 2012 (Event No 652027, p. 30).

⁽⁴⁴⁾ See the BP Statistics, p. 22.

⁽⁴⁵⁾ Receiving terminals at: Dornum, Dunkerque, Easington, Emden, St Fergus and Zeebrugge (<http://www.gassco.no/wps/wcm/connect/Gassco-NO/Gassco/Home/norsk-gass/Transportsystemet>).

(62) There are a number of independent companies who are active in the production of gas on the NCS. Moreover, new companies are accepted as licensees. The five largest gas producing companies on the NCS, measured in terms of annual production level, are: Petoro, Statoil, Exxon Mobil, Total and Shell. Statoil is the largest gas-producing company on the NCS. The three largest gas-producing companies' combined share of total production of gas on the NCS does not exceed 50 % ⁽⁴⁶⁾.

(63) The EU Member States consume about 500 billion cubic metres gas per year. According to Eurogas ⁽⁴⁷⁾, in 2011, gas supplies from the EU Member States accounted for 33 % of total net supplies, followed by Russia (24 %), Norway (19 %) ⁽⁴⁸⁾ and Algeria (9 %), delivered both by pipeline and as LNG. Other sources from different parts of the world contributed the remaining 15 %.

(64) All licensees on the NCS are responsible for selling their own gas. Producing companies on the NCS have gas sales agreements with buyers in a number of EU Member States. The share in 2011 of the total consumption of gas which was provided by Norwegian gas in each of the six EU Member States importing the most gas from the NCS was as follows ⁽⁴⁹⁾:

EEA State	% of consumption provided by Norwegian gas
UK	35 %
Germany	32 %
Belgium	34 %
Netherlands	24 %
France	26 %
Italy	14 %

EEA national gas consumption – IHS CERA

⁽⁴⁶⁾ See the Norwegian Government's letter to the Authority dated 15 February 2013 (Event No 663313, p. 28).

⁽⁴⁷⁾ See Eurogas, Statistical Report 2012, p. 1 (http://www.eurogas.org/uploaded/Statistical%20Report%202012_final_211112.pdf).

⁽⁴⁸⁾ It appears from the information submitted by the Norwegian Government to the Authority that the figure might be somewhat higher. However, this is immaterial to the outcome of the Decision in this case.

⁽⁴⁹⁾ The statistics for the destination of Norwegian natural gas to the EEA are based on the nationality of the purchasing company.

- (65) Statoil is the second largest gas supplier to the EEA after Gazprom with approximately 20 %⁽⁵⁰⁾ of total EEA consumption. As can be seen from the table above, in the main EEA States to which Norwegian gas is supplied, the NCS suppliers face competition from suppliers who source their gas from other geographical areas. Consequently, buyers at the wholesale level in these EEA States have alternative sources of supply to gas from the NCS. This can be illustrated further by the statistics compiled by Eurogas (table below), which shows that in addition to Norwegian gas, EU Member States received gas supplies from indigenous production, Russia, Algeria, Qatar and other sources:

NATURAL GAS SUPPLIES IN EUROGAS MEMBER COUNTRIES AND EU, 2011⁽¹⁾

TWh	Indigenous Production	Russia	Norway	Algeria	Qatar	Other sources (*)	Changes in stocks (**)	Other balances	Total Net Supplies	% Change 2011/2010
Austria	18,8	59,8	14,5	0,0	0,0	29,4	- 22,1	- 4,9	95,6	- 6 %
Belgium	0,0	3,4	82,4	0,0	30,8	66,9	- 0,2	0,0	183,3	- 15 %
Bulgaria	4,2	29,3	0,0	0,0	0,0	0,0	0,2	- 1,4	32,3	11 %
Czech Republic	1,4	63,3	12,2	0,0	0,0	23,2	- 10,0	- 4,6	85,5	- 10 %
Denmark	81,7	0,0	0,0	0,0	0,0	- 31,9	- 1,8	- 7,4	40,6	- 18 %
Estonia	0,0	6,5	0,0	0,0	0,0	0,0	0,0	0,0	6,5	- 10 %
Finland	0,0	43,4	0,0	0,0	0,0	0,0	0,0	0,0	43,4	- 12 %
France	6,5	72,6	182,9	66,7	37,4	135,0	- 22,4	- 1,5	477,2	- 13 %
Germany	137,3	336,9	303,1	0,0	0,0	110,2	- 22,8	0,0	864,7	- 11 %
Greece	0,0	30,3	0,0	8,7	1,9	10,5	- 0,1	- 0,1	51,2	23 %
Hungary	32,5	72,6	0,0	0,0	0,0	5,6	14,0	- 0,6	124,2	- 6 %
Ireland	2,1	0,0	0,0	0,0	0,0	51,1	0,0	0,0	53,2	- 12 %
Italy	88,5	247,1	38,6	242,8	65,7	149,0	- 8,2	0,9	824,4	- 6 %
Latvia	0,0	16,2	0,0	0,0	0,0	0,0	0,0	0,0	16,2	- 13 %
Lithuania	0,0	57,0	0,0	0,0	0,0	- 21,9	- 0,1	0,0	35,0	9 %
Luxemburg	0,0	3,2	6,9	0,0	0,0	3,2	0,0	0,0	13,4	- 13 %
Netherlands	746,7	44,0	129,0	0,9	3,7	- 481,6	0,0	15,8	458,3	- 10 %
Poland	47,6	102,7	0,0	0,0	0,0	17,4	- 8,4	- 1,4	157,9	2 %
Portugal	0,0	0,0	0,0	21,6	0,0	36,9	0,0	0,0	58,5	0 %

⁽⁵⁰⁾ This sales volume includes Statoil's sales on behalf of Petoro / SDFI.

TWh	Indigenous Production	Russia	Norway	Algeria	Qatar	Other sources (*)	Changes in stocks (**)	Other balances	Total Net Supplies	% Change 2011/2010
Romania	117,0	34,2	0,0	0,0	0,0	0,0	-0,4	0,0	150,8	3 %
Slovakia	1,0	62,4	0,0	0,0	0,0	-5,7	0,2	-0,1	57,7	-3 %
Slovenia	0,0	5,3	0,0	2,6	0,0	0,9	-0,1	0,1	8,8	-16 %
Spain	1,9	0,0	13,9	147,4	51,5	160,4	-4,5	1,6	372,2	-7 %
Sweden	0,0	0,0	0,0	0,0	0,0	14,9	0,0	0,0	14,9	-20 %
United Kingdom	526,7	0,0	244,2	2,6	230,6	-76,7	-22,6	-0,1	904,7	-17 %
EU	1 813,9	1 290,1	1 027,7	493,3	421,6	196,8	-109,2	-3,7	5 130,5	-10 %
% Change 2011/10	-11 %	2 %	-3 %	-8 %	21 %	-45 %	-199 %	-78 %	-10 %	
Switzerland	0,0	7,6	7,3	0,0	0,0	19,6	0,0	0,0	34,5	-10 %
Turkey	8,1	270,3	0,0	44,2	0,0	144,7	0,0	2,4	469,7	18 %

(¹) This table is taken from the Eurogas, Statistical Report 2012, p. 6.

Units: terawatt hour (gross calorific value).

Note: Figures are best estimates available at the time of publication.

(*) Including net exports.

(**) (-) Injection / (+) Withdrawal.

(66) Considering the EU Member States with the highest share of gas from Norway, there are alternative sources of supply. Some of these alternatives are:

— In the UK, where gas from the NCS accounts for approximately 35 %, there is a considerable domestic production of gas (although this has been decreasing since 2000) (⁵¹). Imports of LNG to the UK has grown substantially over the last few years (⁵²).

— In Belgium, where gas from the NCS accounts for approximately 34 %, LNG is regasified at Zeebrugge LNG terminal and is substitutable with piped gas.

— In Germany, where gas from the NCS accounts for approximately 32 %, the two Nord Stream pipelines from Russia was inaugurated in 2011 and 2012 respectively and provide a new source of gas supplies from Russia. The Norwegian Government is of the opinion that the opening of these pipelines most probably will lead to increased competition between Norwegian and Russian gas, as this increases supply diversification to Europe.

(67) Buyers at wholesale level must honour their take-or-pay commitments under relevant long-term sales contracts with Norwegian gas suppliers. Once these commitments are honoured, wholesale buyers are free to switch to alternative sources of supply, such as spot piped gas, spot LNG or they can increase volumes taken under long-term contracts with other suppliers. More recent sales contracts tend to have shorter duration. As submitted by the Norwegian Government, the spot market is becoming more important with increasingly liquid hubs both in the UK and on the European continent. Furthermore, in the EU, regasification

(⁵¹) Digest of UK energy statistics' ("DUKES") 2012, Department of Energy & Climate Change, Chapter 4 Natural gas (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65800/5954-dukes-2012-chapter-4-gas.pdf), p. 95.

(⁵²) DUKES (see footnote 50), p. 95.

capacity has more than doubled in the past five years. In 2011, 25 % of EU's net imports of gas were delivered by LNG, broken down by the following EU Member States:

LNG SUPPLIES IN EUROGAS MEMBER COUNTRIES AND EU, 2011 ⁽¹⁾

TWh	LNG Net-Imports	% Change 2011/2010
Belgium	49,8	- 19 %
France	163,9	5 %
Greece	13,5	5 %
Italy	94,2	- 2 %
Netherlands	9,5	
Portugal	34,7	7 %
Spain	257,2	- 18 %
United Kingdom	270,7	33 %
EU	893,5	2 %
Turkey	68,9	- 21 %

⁽¹⁾ This table is taken from the Eurogas, Statistical Report 2012, p. 7. Units: terawatt hours (gross calorific value).

- (68) Competitive pressure in the natural gas market also comes from the existence of alternative products to gas (such as coal or renewables).
- (69) All major gas transportation pipelines from the NCS to the European continent and to the UK are owned by Gassled ⁽⁵³⁾. Access to the upstream pipeline network is managed by Gassco AS, a company wholly owned by the Norwegian State. Gassco AS does not own any shares or capacity in the upstream pipeline network and it acts independently in granting access to free capacity. The gas transport system is neutral for all players with a need to transport natural gas. Producing companies and qualified users have a right to access the system on non-discriminatory, objective and transparent conditions. The users have access to capacity in the system based on their need for gas transport ⁽⁵⁴⁾. Thus, current and new gas operators on the NCS can get access to the upstream pipeline network and can supply gas to customers in competition with other operators on the NCS.
- (70) In the light of the elements above, the Authority considers that there is nothing to indicate that the sector is not functioning in a market-driven fashion,

⁽⁵³⁾ Gassled is an unincorporated joint venture regulated under Norwegian law. The Gassled owners each hold an undivided interest, corresponding to their respective participating interest, in all rights and obligations of the joint venture (cf. the Norwegian Government's notification to the Authority dated 5 November 2012 (Event No 652027, p. 7-8).

⁽⁵⁴⁾ See the white paper *An industry for the future – Norway's petroleum activities* (Meld. St. 28 (2010–2011) Report to the Norwegian Parliament (Storting), p. 68.

and that the production of natural gas on the NCS therefore is directly exposed to competition within the meaning of Directive 2004/17/EC.

III. CONCLUSION

- (71) The Authority considers that the following activities in Norway and in particular on the Norwegian Continental Shelf are directly exposed to competition within the meaning of Article 30(1) of Directive 2004/17/EC:
- (a) exploration for crude oil and natural gas;
 - (b) production of crude oil; and
 - (c) production of natural gas.
- (72) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a), (b) and (c) of paragraphs 2 and 71 of this Decision to be carried out in Norway and in particular on the Norwegian Continental Shelf.
- (73) This Decision is based on the legal and factual situation in March 2013 as it appears from the information submitted by the Norwegian Government. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met.

HAS ADOPTED THIS DECISION:

Article 1

The Act referred to at point 4 of Annex XVI to the Agreement on the European Economic Area laying down the procedures for the award of public contracts in the utilities sector (Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors) shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out on in Norway and in particular on the Norwegian Continental Shelf:

- (a) exploration for crude oil and natural gas;
- (b) production of crude oil; and
- (c) production of natural gas.

Article 2

This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 30 April 2013.

For the EFTA Surveillance Authority

Sverrir Haukur GUNNLAUGSSON
College Member

Markus SCHNEIDER
Acting Director
