SUMMARY OF COMMISSION DECISION

of 2 September 2013

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case M.6360 — Nynas/Shell/Harburg refinery)

(notified under document number C(2013) 5594 final)

(only the English version is authentic)

(Text with EEA relevance)

(2014/C 368/04)

On 2 September 2013 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

I. THE PARTIES

(1) Nynas AB ('Nynas', Sweden) is the parent of an international group of companies that produces and sells naphthenic base and process oils, transformer oils ('TFO') and bitumen. Shell Deutschland Oil GmbH (Germany) is part of the Shell group of companies (Shell'). Nynas and Shell are hereinafter referred to as 'the Parties'.

(2) Shell is a fully integrated global group of energy and petrochemical companies. Shell Deutschland Oil GmbH operates a refinery in Hamburg-Harburg which currently comprises:

(i) a fuels and distillates refinery, including a tank-farm for crude oil and fuel products (the 'Refinery'); and

(ii) a base oil manufacturing plant ('BOMP') (which is fed by distillates from the Refinery), a tank for blending TFO and bitumen facilities (the three installations together are the 'Harburg BOMP').

II. THE OPERATION

(3) On 19 February 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Regulation (EC) No 139/2004 ('Merger Regulation') by which Nynas acquires sole control within the meaning of Article 3(1)(b) of the Merger Regulation of part of Shell Deutschland Oil GmbH by way of purchase of assets.

(4) The notified transaction relates to the Harburg BOMP and certain parts of the Refinery that are necessary to produce distillates from crude oil, together 'the Harburg refinery assets'. The Harburg refinery assets represent the basis of Shell's current market presence for base and process oils in the EEA and are therefore a part of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation.

(5) The notified transaction consists of a 25-year lease of the Harburg refinery assets, including a put-option for Shell and a call-option for Nynas enabling them to convert the lease agreement into an asset-deal. The operation will give Nynas control over the Harburg refinery assets on a lasting basis and thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. SUMMARY

(6) After preliminary examination of the notification, the Commission adopted a decision on 26 March 2013, concluding that the operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

(7) On 17 June 2013, a statement of objections was sent to the Parties pursuant to Article 18 of the Merger Regulation. The Parties replied to the statement of objections on 8 July 2013. Shell has submitted a supplementary response on 10 July.

(8) The Advisory Committee discussed the draft decision on 21 August 2013 and issued a favourable opinion.

(1) OJ L 24, 29.1.2004, p. 1.

IV. **EXPLANATORY MEMORANDUM**

A. THE RELEVANT PRODUCT MARKETS

(9) The Parties' activities will give rise to (a) horizontal overlaps in the production and supply of (i) base and process oils for industrial use; and (ii) Transformer Oils ('TFO'); and (b) vertical links in the production of naphthenic base oils and TFO.

(i) Base and process oils for industrial use

(10) Both Nynas and the Commission are of the view that it is appropriate to define one single relevant product market for base and process oils for industrial use, most importantly because they are identical in terms of physical and chemical characteristics.

(11) Nynas argues that naphthenic base and process oils can be substituted by paraffinic base and process oils, but the Commission takes the view that a separate product market for the production of naphthenic base and process oils, as opposed to paraffinic base and process oils, should be defined, most importantly because:

— with regard to demand side, naphthenic and paraffinic oils are different in terms of product characteristics, such as the solvency or volatility, and price,

— for some end-applications in which naphthenic oils are used, naphthenic oils cannot be substituted by paraffinic oils because of the difference in product characteristics. For other end-applications for which technical substitution may not be excluded switching is costly and takes a very long time,

— with regard to supply side, the production processes of naphthenic and paraffinic base and process oils require different (a) equipment and facilities; and (b) feedstocks.

(12) Nynas submitted a price premium correlation study to illustrate that the correlations between the premiums of the selected naphthenic and paraffinic applications are strong enough to conclude that the naphthenic and paraffinic products are on the same market. The Commission however takes the view that the methodology used to calculate the price premium is problematic, as it has led to spurious correlation. Once the methodological problem was corrected, the results did not support a broad market definition.

(13) The Commission agrees with Nynas that for reasons of supply side substitutability the market for base and process oils is not segmented according to end-applications, even though there is a distinct demand for each end-application.

(14) The Commission does not share the view of Nynas that naphthenic base and process oils are substitutable with GtL-based products, i.e. products that are produced by using a technology of conversion of natural gas into liquid hydrocarbon products at the site of gas production, as (a) it is uncertain whether GtL — which is different in terms of viscosity, viscosity index, volatility, solvency and sulphur content — can be an alternative for most end-applications; (b) the GtL production process is significantly more expensive; and (c) there could be high costs associated to switching.

(ii) Transformer Oils (TFO)

(15) TFO are used to insulate distribution transformers and power transformers. They consist of a blend of highly-refined base oils. TFO are usually produced from naphthenic base oil, paraffinic base oil or a blend of both. Transformer oils can be classified as inhibited or uninhibited, the primary difference being that a small amount of oxidation inhibitor is added to the inhibited TFO. The inhibitor delays the onset of oxidation of the TFO, thus prolonging the life of the TFO and of the transformer. In terms of production, higher quality oil is required for inhibited as opposed to uninhibited TFO.

(16) The Commission agrees with Nynas that TFO constitutes a separate market from base and process oils, notably due to different technical characteristics and a different production process. TFO has special dialectical characteristics and needs special refinery treatment, its key requirements being longevity and dialectical stability (i.e. the oil must be a very good electrical insulator).

(17) Nynas and the Commission agree that unused and reclaimed TFO should be considered as separate product markets, notably in view of the differences in quality and price. They also share the view that a further segmentation of the TFO market into (i) inhibited; and (ii) uninhibited TFO would not be appropriate, because substitution between inhibited and uninhibited TFO is both technically and economically possible from the supply and from the demand side. The long lifetime of inhibited TFO has an influence on the competitive situation but it does not justify the definition of a separate market.

(18) In line with Nynas' view, the Commission considers that TFO made from (i) naphthenic; (ii) paraffinic base oils; and (iii) a blend of them should not be considered as separate product markets. Although there is a difference in terms of chemical characteristics, price and production process, technically all kinds of TFO products can be used for all end applications and the technical specifications defined in the international standards for TFO can be met regardless of the naphthenic or paraffinic nature of the base oils used.

B. THE RELEVANT GEOGRAPHIC MARKETS

(i) Base and process oils for industrial use

(19) In its *Exxon/Mobil* decision (M.1383), the Commission found that the relevant geographic market for Group I base oils used in lubricants was EEA-wide considering:

— prices in the United States and Asia had been consistently above prices in the EEA and had not posed a competitive constraint,

— base oils for lubricants in Europe needed to conform to specific European consumption profiles as well as EEA requirements, and

— there was no spot market for base oils in the EEA with any material liquidity and traders on the stock market had not imported base oil into the EEA in previous years.

(20) Nynas argues that the market conditions have in the meantime significantly evolved. At present, base and process oils would be produced and traded globally in accordance with international classification standards and quality requirements. However, the Commission takes the view that the geographic scope of the market for naphthenic base and process oils for industrial applications is EEA-wide:

(a) customers who use naphthenic base and process oils for their production in the EEA mostly opt for suppliers based in the EEA;

(b) transport costs constitute a barrier to imports into the EEA;

(c) factors other than transport costs and import tariffs concern logistical constraints such as local storage and distribution;

(d) prices are different between the EEA and North America, as well as between the EEA and the rest of the world. The price premium correlation study submitted by Nynas does not support its view of a geographic market wider than the EEA once the methodological problem is corrected;

(e) the quality of naphthenic base and process oils is different between the EEA and the rest of the world.

(ii) Transformer Oils (TFO)

(21) Nynas takes the view that the market for TFO has a global scope for the following reasons: (i) existence of a global trade structure; (ii) global prices; (iii) consumption profiles and quality requirements are more and more globalised; and (iv) harmonisation of global environmental standards has led to the streamlining of customers' requirements on a global basis.

(22) However, the Commission takes the view that the geographic scope of the market for TFO and its submarkets of inhibited and uninhibited TFO is EEA-wide for similar reasons as mentioned above in paragraph (20):

(a) a large part of the customers sources all or almost all TFO in the EEA;

(b) transport costs constitute a barrier to imports in the EEA;

(c) access to storage, reliability of supply, the difference in standard requirements or reputation constitute other barriers to imports of TFO into the EEA;

(d) prices and competitive conditions are different between the EEA and North America as well as between the EEA and the rest of the world;

(e) the quality of TFO is different between the EEA and the rest of the world.

C. COMPETITIVE ASSESSMENT

1. **Framework for assessing the proposed transaction**

(23) A merger that significantly impedes effective competition in the internal market or in a substantial part of it shall be declared incompatible with the internal market; its implementation shall be prohibited [2]. There is no basis for a prohibition, however, if the competitive structure of the market would deteriorate to the same or a greater extent without the merger [3].

(24) Thus, to assess whether a merger significantly impedes effective competition, the Commission must compare the competitive conditions that prevail without the merger with the conditions that would result from the merger [4].

(25) To determine the conditions that would prevail without the merger, the Commission may take into account future changes to the market that can reasonably be predicted [5].

(26) Of particular relevance may be whether, without the merger, the relevant assets would exit the market. Where the assets would in the near future be forced out of the market if not taken over by another undertaking and where there is no prospect of a less anti-competitive alternative purchase than the notified merger, the Commission may conclude that a deterioration of the competitive structure that follows the merger is not caused by the merger, since the competitive structure of the market would in any event deteriorate to at least the same extent without the merger [6].

(27) It is for the notifying parties to provide in due time all the relevant information necessary to demonstrate that a deterioration of the competitive structure that follows the merger is not caused by the merger [7].

In absence of the Transaction, the Harburg refinery assets will be forced out of the market if not taken over by another undertaking

(28) The Harburg refinery assets have been, on average, loss making during the period (past 5 to 10 years). During the last 5 to 10 years, the refinery's aggregate NIBIAT was USD (- 50 to - 150) million and the annual average loss amounted to USD (0 to - 50) million. Additionally, and according to Shell's latest internal computations, the net present value ('NPV') of closing the Harburg refinery asset is approx. USD (- 300 to - 550) million, while the NPV of continuing to operate the assets would be approx. USD (- 800 to - 1 000) million. As continued operation would lead to the double of losses, it is self-evident that closure of the site is significantly more attractive to Shell.

(29) Shell has publicly communicated closure in the absence of a divestiture of Harburg. It has also explained its future business strategy to leave the naphthenic industrial oil sector. This strategy is in line with the fact that over the last two decades, most of the oil majors have exited the naphthenic business, focusing more on exploration and production activities as well as commodity products such as fuels. Shell provided documentary evidence that it has already closed down the fuels part of the refinery in April 2013 and that scrapping has been started.

(30) Finally, the Commission analysed internal documents submitted by Shell and did not find any indication that Shell had plans to operate the Harburg refinery long-term.

(2) Articles 2(3), 8(3) and 14(2)(c) of the Merger Regulation.
(3) See, to that effect, Joined Cases C68/94 and C30/95 *France and Others* v *Commission* [1998] ECR I1375, '*Kali & Salz*', paragraphs 109 to 124. See also point 89 of the Horizontal Merger Guidelines.
(4) Horizontal Merger Guidelines, point 9.
(5) See footnote 4.
(6) See, to that effect, points 89 and 90 of the Horizontal Merger Guidelines.
(7) Point 91 of the Horizontal Merger Guidelines.

(31) Based on the abovementioned facts, the Commission concludes that the Harburg refinery assets will in the near future be forced out of the market if not taken over by another undertaking.

There is no less anti-competitive alternative purchase than the notified merger

(32) Before engaging into negotiations with Nynas regarding the sale of the Harburg refinery asset, Shell had commenced internal planning efforts at the end of 2008 for the sale of the Harburg/Heide refineries. However, there was no credible interest from buyers to purchase the whole of the Harburg refinery complex. Niche players expressed interest in acquiring the BOMP alone, which would have left Shell with a stranded fuels refinery asset. After realising that Shell would not be able to sell the entire Harburg refinery Shell decided to retain part of it (and convert it into a terminal) and to try to sell the remaining part together with the BOMP to a potential niche base oil player. Nynas and Ergon were identified as the only potential buyers based on this new divestment concept. Ergon is a US-based company active in the production of naphthenic base and process oils, among others. Ergon is currently Nynas' main competitor in the EEA. It exports naphthenic base and process oils from its facility in the US to the EEA.

(33) On 20 April 2011, Shell sent out a process letter to both Nynas and Ergon requesting final binding bids for the assets by 5 May 2011. On 28 April 2011, Shell received an e-mail from Ergon explaining that based on the results of its financial model, the Due Diligence Team had recommended to Ergon's Executive Committee not to proceed further with the project. Ergon summarised its due diligence findings in a financial model in April 2011, which showed that the estimated return was far below the 'hurdle' rate that they would find acceptable for such investments.

(34) Further contacts between Shell and Ergon took place to see if there was a way a binding bid could be submitted to Shell. Shell compared Ergon's proposed deal terms to the cost of closure. Shell explained to the Commission that Ergon's requests included Shell's list of naphthenic base and process oil customers that Shell was (and is still) not willing to give up, as this would undermine its GtL strategy, as Shell planned to migrate its current customers of naphthenic oils to its GtL products in the future. It was the high value of the customer list that made the value of Ergon's deal more costly than the cost of closure.

(35) In addition, the Commission has analysed internal documents submitted by Ergon but it has not found internal documents that confirm Ergon's continued interest in acquiring Harburg.

(36) The Commission has also considered whether a quantitative analysis of Ergon's incentives to acquire the assets and of Shell's incentives to sell can be used to establish the likelihood of an acquisition of the Harburg refinery assets by Ergon in the absence of the Proposed Transaction. However, due to the uncertainty of key parameters the precision of the quantitative analysis of the likelihood of Ergon acquiring Harburg in the absence of the transaction is low. Therefore, the quantitative analysis cannot be used to reliably conclude whether it would be likely that Ergon would be willing to buy the Harburg refinery assets at a (possibly negative) price that Shell would be still willing to accept.

The Harburg assets would inevitably exit the market.

(37) In the present case the transaction is an asset deal. Therefore, in the absence of the transaction the Harburg refinery assets will be forced out of the market in the near future, as there is no alternative credible buyer that could acquire the Harburg refinery assets.

Conclusion

(38) The competitive effects of the present transaction will be assessed against an alternative scenario which is the exit of the Harburg refinery assets from the relevant markets.

2. **Horizontal non-coordinated effects in the market for naphthenic base and process oils**

(39) The Commission takes the view that in the present case the analysis of market shares does not give an accurate indication of the effects of this transaction on the competitive situation on the market.

(40) Post-transaction Nynas would have a combined market share in the EEA of ca. 73 % in naphthenic base and process oils in 2012 in terms of volume, with an increment of (10-20 %). Ergon will account for (20-30 %) % and Calumet and PetroChina account for only (0-5 %) and (0-5 %) of the EEA market, respectively.

Base and process oils – Industrial segment (volume in kt) – Naphthenic oils only EEA								
	2009		2010		2011		2012	
	kt	%	kt	%	kt	%	kt	%
Nynas	[…]	[60-70 %]	[…]	[60-70 %]	[…]	[60-70 %]	[…]	[50-60 %]
Target	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]
Ergon	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[20-30 %]
Calumet	[…]	[1-5 %]	[…]	[1-5 %]	[…]	[1-5 %]	[…]	[1-5 %]
PetroChina	[…]	[1-5 %]	[…]	[1-5 %]	[…]	[1-5 %]	[…]	[1-5 %]
Total	[…]	100	[…]	100	[…]	100	[…]	100
Source: Form CO								

(41) Under a closure scenario, Nynas would remain capacity constrained and it would have to rely on additional costly imports or will have to forgo non-EEA sales that it currently finds profitable. Either of these two options would result in an opportunity cost that would reduce the incentive to compete aggressively in the EEA. Ergon would most likely capture a higher share of the market in the closure scenario compared to a merger scenario. However, Ergon's increase in market share in the closure scenario would be associated with a higher price level than the one that would prevail under the proposed transaction. As Ergon claimed, it would increase supply from the United States to the EEA only in case of a price increase in the EEA.

(42) In other words, the higher market share that Nynas is likely to capture under the proposed transaction is primarily due to Nynas becoming more competitive relative to the closure scenario, and is not associated with higher prices relative to that scenario.

Less capacity in the absence of the notified transaction

(43) The Harburg refinery assets have a capacity of around (150-250) ktpa and produce around (100-200) ktpa [8] of naphthenic base and process oils [9]. In absence of the notified transaction, the Harburg refinery assets would leave the market and that would represent a reduction in capacity of around (150-250) ktpa for the EEA market for naphthenic base and process oils. Shell has no other naphthenic base and process oil production capacity. Therefore, Shell would no longer be a competitive constraint once the Harburg refinery assets are closed.

(44) Nynas, the only other EEA producer of naphthenic base and process oil, is capacity constrained, which is why it currently relies on external sources of supply to meet its customers demand. Additionally, an increase of production capacity at the Nynäshamn refinery appears unlikely. Nynas has been looking for an opportunity to secure and increase its capacity. Most of the alternatives considered comprised projects outside the EEA. One alternative project in the EEA was considered. However, the project was rejected by Nynas' Board of directors in 2007, long before the Harburg refinery assets were for sale. The main reason behind that rejection was that the contemplated investments were considered too high in comparison to the expected profitability.

(45) The Commission therefore considers that in the absence of the notified transaction there would be a relatively significant reduction of supply capacity on the EEA market for naphthenic base and process oils, which is likely to lead to an increase in prices. This conclusion is valid even in the absence of any expansion of the Harburg refinery assets by Nynas under the notified transaction, that is even if Nynas would not further expand the capacity of the Harburg Assets.

(8) Kilotons per annum.
(9) Form CO Paragraph 167 and Table 762.

(46) Furthermore, the transaction would create significant efficiencies, as explained below.

The transaction leads to a capacity increase at Harburg and thereby lower prices

(47) The transaction would result in a verifiable capacity increase of around 160 ktpa in the EEA which will lead to verifiable cost savings for Nynas on significant volumes of sales. The Commission has calculated, based on evidence provided by Nynas, that Nynas would have a reduction of its effective variable costs for incremental EEA sales of roughly (20-30 %) %. The Commission therefore acknowledges that significant volumes that would be otherwise procured more expensively by spot transactions from third parties can be substituted by cheaper production in the EEA as a consequence of the proposed transaction.

(48) As Nynas cannot realise the cost savings described above by other means than the transaction, the Commission concludes that the cost savings are merger specific. In addition, Nynas' cost savings will be likely reflected in its prices. The Transaction would thus benefit consumers, as Nynas will have the incentives to partly pass on the cost savings to consumers, leading to lower prices relative to the levels that would prevail in the absence of the transaction.

Conclusion

(49) The Commission concludes that the proposed transaction not only preserves the existing production capacity in the Harburg refinery assets but also adds more capacity as a result of the verifiable expansion. Shell would disappear from the naphthenic market independently of the proposed transaction. Nynas can use the additional capacity to replace high variable cost imports with its own production in the Harburg refinery assets that entails lower variable cost. Therefore it has high incentives to use the additional capacity. As a result of the proposed transaction, more capacity will be available on the EEA market at lower variable costs. This will likely have a positive effect on EEA prices relative to the scenario in the absence of the concentration.

3. **Horizontal non-coordinated effects in the market for TFO**

(50) Post-transaction Nynas would have a combined market share in the EEA of (50-60 %) % in terms of volume in 2012 with an increment of (5-10 %) %.

Table TFO (2012)

TFO volume (ktons) and market share (%)

	2009		2010		2011		2012	
	kt	%	kt	%	kt	%	kt	%
Nynas	[…]	[50-60 %]	[…]	[50-60 %]	[…]	[40-50 %]	[…]	[50-60 %]
Shell Harburg refinery	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[5-10 %]
Ergon	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]	[…]	[10-20 %]
Repsol	[…]	[5-10 %]	[…]	[5-10 %]	[…]	[5-10 %]	[…]	[5-10 %]
Apar	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[5-10 %]	[…]	[0-5 %]
Rosneft (Angarsk)	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[0-5 %]
Savita	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[0-5 %]
Others	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[0-5 %]	[…]	[5-10 %]
Total	[…]	100	[…]	100	[…]	100	[…]	100

Source: Nynas

(51) Ergon accounts for a market share of (20-30 %) % in terms of volume in 2012 according to Nynas. Also other players will remain in the market for TFO post-transaction, namely: Repsol, Apar, Rosneft and Savita.

(52) Shell has not sold its list of TFO customers to Nynas, as it plans to convince its customers to substitute naphthenic TFO with GtL alternatives produced by Shell in Qatar.

(53) The Commission considers that post-transaction Nynas is likely to capture most of Shell's TFO market share due to its increased competitiveness. In the alternative closure scenario it is less clear who would supply Shell's previous customers, as Nynas will remain capacity constrained. In order to serve incremental sales, Nynas would continue to have to rely on additional costly import volumes or would have to forgo non-EEA sales that it currently finds profitable, thereby reducing the incentive to compete aggressively in the EEA.

(54) Ergon, on the other hand, has spare capacity at Vicksburg, and would continue to use its capacity to increase supplies to EEA customers. Ergon specified that in case of a price increase in the EEA, Ergon could supply an additional 30 kt/year to 50 kt/year to the EEA.

(55) Therefore, it is likely that Ergon would capture a higher share of the market in the closure scenario compared to a merger scenario. However, this would take place without the competitive constraint from Harburg. Similarly, Nynas would be constrained from competing aggressively as its ability to expand production at competitive prices would be limited. Consequently, Ergon could likely increase its market share in the closure scenario at a higher price level, compared to the proposed transaction.

Conclusion

(56) The proposed transaction is likely to lead to higher market shares for the combined entity than closure. However, Nynas' higher market share does not indicate anti-competitive effects of the proposed transaction, relative to the closure scenario, given the specific circumstances of this case. In particular, the proposed transaction will preserve the existing production capacity in the Harburg refinery assets and will add more capacity as a result of the verifiable expansion. Absent the transaction this production capacity will be lost as Shell would have exited the market. As well, as in the case of base oils, the additional capacity will be available on the EEA market at lower variable costs. This will likely have a positive effect on EEA prices relative to the scenario in the absence of the concentration.

4. **Horizontal coordinated effects in the market for naphthenic base and process oils and in the market for TFO**

(57) The Commission takes the view that the proposed transaction is also not likely to lead to a significant impediment to effective competition on the markets for naphthenic base and process oils and TFO as a result of coordinated effects. Shell will no longer be active in these markets in the absence of the transaction. The transaction therefore does not significantly change the structure of the market. Furthermore naphthenic base and process oils need to be tested and qualified by each customer for each end application. On this basis, coordinated effects are unlikely to arise as a result of the transaction.

5. **Non-coordinated effects**

(58) The Commission takes the view that the proposed transaction is not likely to lead to a significant impediment to effective competition as a result of the vertical link between the parties' activities in the markets for naphthenic base oil and TFO. The transaction will not likely lead to input foreclosure as the parties do not supply base oils to third parties in the EEA and most third party TFO producers have their own base oil production. Customer foreclosure is also unlikely to arise as the Parties only buy 5-7 % of their needs of naphthenic base oil from third parties.

V. **CONCLUSION**

(59) Without the proposed concentration, the Harburg refinery assets will most likely exit the market, which would be much worse for the competitive structure of the relevant markets than the foreseeable effects of the concentration.

(60) The Commission concludes, therefore, that the concentration will not significantly impede effective competition and must be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.