Anticipated acquisition by the Korea National Oil Corporation of Dana Petroleum plc

ME/4655/10

The OFT's decision on reference under section 33(1) given on 23 September 2010. Full text of decision published 30 September 2010.

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

CR/43/10

PARTIES

1. **Korea National Oil Corporation (KNOC)** is a fully state-owned energy company whose objectives are to explore and secure energy sources and to store and distribute petroleum stocks for the Republic of Korea. It is wholly-owned by the Government of the Republic of Korea. It has projects located in various countries. In the UK, KNOC's only asset is in the UK Continental Shelf. Korea Captain Company Ltd, a wholly owned subsidiary of KNOC in the UK, has a 15 per cent interest in the Captain Field which is operated by Chevron.

2. **Dana Petroleum (Dana)** is a public limited company incorporated in England and Wales and listed on the London Stock Exchange. Dana is engaged in the exploration, extraction and production of oil and natural gas. Dana produces oil from assets located in the Northern North Sea and Norway, the Central North Sea, the Southern North Sea and Egypt. Among its assets include licences granted by the UK, Netherlands, Norway, Egypt, the Faroe Islands, Mauritania, Morocco, Senegal and Guinea. Dana has oil and gas reserves located in the

UK, Egypt and Morocco. Dana's UK turnover for the financial year ended 30 April 2009 was £324 million.[1]

TRANSACTION

3. The transaction is a cash offer by KNOC to acquire the entire issued and to be issued share capital of Dana. KNOC is also offering cash to acquire Dana Petroleum Convertible Bonds.

4. On 2 July 2010, KNOC announced its preliminary discussions regarding a possible cash offer for the entire issued and to be issued share capital of Dana. On 23 July 2010, in an announcement under Rule 2.4 of the City Code on Takeovers and Mergers (the City Code), KNOC revised its original indicative offer made on 17 June 2010 of £17.00 per share to £18.00 per share. An offer announcement to the shareholders of Dana under Rule 2.5 of the City Code was made on 20 August 2010.

5. At the time of writing, KNOC's cash offer has not been accepted by the required number of Dana's shareholders under Rule 10 of the City Code.

6. On 17 September 2010 KNOC acquired a number of shares of Dana representing approximately 29.5 per cent of the share capital of Dana.

7. In addition, at the time of writing, Dana has announced that it has entered into an agreement with Petro-Canada UK Limited (Petro-Canada UK) to acquire Petro-Canada UK's interests in certain UK assets. In assessing this acquisition by KNOC the OFT has considered, whether this transaction creates a realistic prospect of a substantial lessening of competition regardless of whether or not Dana's acquisition of certain Petro-Canada's UK assets proceeds.[2]

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[1] On 13 August 2010 Dana announced the completion of the acquisition by Dana of Petro-Canada Netherlands BV. Therefore Dana's UK Turnover includes Petro-Canada Netherlands' UK turnover of £25 million.

[2] OFT1254 - Mergers Assessment Guidelines – a joint publication of the Competition Commission and the Office of Fair Trading, paragraphs 4.3.25 and 4.3.26

8. KNOC notified the merger to the Office of Fair Trading (OFT) by means of a Merger Notice under section 96 of the Enterprise Act 2002 on 25 August 2010. The statutory deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) expires on 23 September 2010.

JURISDICTION

9. As a result of this transaction KNOC and Dana will cease to be distinct. The UK turnover of Dana exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

10. The parties are both active in the upstream oil and gas sector. Upstream activities comprise three types of commercial activity: exploration, development and exploitation (production and sale) of oil and gas. Exploration of oil and gas constitutes the finding of new reserves. The development of oil and gas consists of the setting up of adequate infrastructure for future product, including oil platforms, pipelines and terminals. The exploitation of oil and gas consists of the production and sale of crude oil, natural gas and natural gas liquids.

Product scope

11. The parties argued that the exploration of oil and gas constitutes a separate market. In previous cases, the European Commission considered that gas and oil exploration constitutes a separate market that is distinct from the development and exploitation of natural gas and crude oil.[3] In addition, the Commission stated that there is no

[3] Case No IV/M.1383 – Exxon/Mobil, 29 September 1999.

justification for distinguishing between exploration of oil and exploration of natural gas, since it is not possible to know the contents of oil or gas fields at the time of exploration.

12. In relation to the development and exploitation (production and sale) of oil and gas, the European Commission has previously considered oil and gas separately. The parties argue that since both parties' production of gas is minimal, the transaction raises no competition concerns regardless of whether or not oil and gas are considered as distinct markets.

13. The OFT has not received any evidence suggesting a departure from the above market definition. Given that the transaction does not raise competition concerns at any segment, the OFT does not need to conclude on the precise product scope. However separate frames of reference will be considered for the exploration of oil and gas, the development and exploitation of crude oil and the development and exploitation of natural gas.

Geographic scope

14. In Exxon/Mobil the European Commission considered the geographic scope of the market for exploration of oil and gas to be global.[4] With regards to the development and exploitation of crude oil, the European Commission has defined a worldwide geographic market. Furthermore, in relation to the development and exploitation of natural gas the European Commission identified the relevant geographic scope of the market as the EEA and possibly Russia and Algeria.

15. The OFT has not received any evidence suggesting a departure from the above market definition. Given that the transaction does not raise competition concerns at any segment, the OFT does not need to conclude on the precise geographic scope.

[4] Case No IV/M.1383 – Exxon/Mobil, 29 September 1999.

HORIZONTAL ISSUES

Market shares

16. KNOC has provided estimated market shares[5] on a worldwide basis for exploration of oil and gas. The OFT did not receive market share information on an EEA-wide basis. However, KNOC has provided estimated market shares on a UK basis for the production of oil and gas. Since, most if not all of KNOC's EEA activities are in the UK, its UK market shares are an conservative indicator for the OFT to use in this case.

17. Based on the evidence available to the OFT, the merged entity will have less than five per cent with a minimal increment of less than two per cent of the worldwide exploration of oil based on capital invested on exploration activities.

18. With regards to the production of oil in the UK, the merged entity will have a market share of less than five per cent with a minimal increment of less than one per cent based on the number of barrels produced. In addition, on a worldwide basis, although KNOC has greater oil production volumes (around 50 million barrels) it is not a major global producer, and Dana's share of oil production calculated on a worldwide basis will be minimal. Similarly, in terms of worldwide crude oil reserves, the parties' combined share is believed to be considerably below five per cent.

19. Finally, regarding the production of gas in the UK, KNOC has no production output in the UK and Dana's market share of UK gas production is estimated less than two per cent based on volume.

20. Therefore, in light of the low combined market shares and very small increments, and in the absence of any third party concerns, the OFT does not believe that the merger raises any competition concerns regarding the exploration, development and exploitation of oil and gas.

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[5] The market shares reflect the interests which Dana has agreed to acquire in assets of Petro-Canada UK Limited.

THIRD PARTY VIEWS

21. No third parties expressed any concerns about the transaction to the OFT.

ASSESSMENT

22. The parties are active in the exploration, development and exploitation (production and sale) of oil and gas in the UK and worldwide. Following the transaction, the merged entity will have market shares of less than five per cent with minimal increment of less than two per cent in the exploration and development of oil and gas worldwide and in the production of oil and gas in the UK.

23. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

24. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.

OFFICE OF FAIR TRADING
23 September 2010