

# Anticipated acquisition by North Sea Midstream Partners Limited of certain assets of Total E&P UK Limited

ME/6563/15

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 November 2015. Full text of the decision published on 23 November 2015.

## SUMMARY

1. North Sea Midstream Partners Limited (**NSMP**), through its subsidiary NSMP Operations Limited, has agreed to acquire a 100% interest in the St Fergus terminal (**St Fergus Plant**) and FRIGG UK offshore pipeline (together, **FUKA**) and a 67.04% interest in the Shetland Island Regional Gas Export System pipeline (**SIRGE**) (together, the **Target Business**) from Total E&P UK Limited (**Total**) (the **Merger**). NSMP and the Target Business are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the enterprises of the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in relation to the processing of wet gas from the Northern North Sea (**NNS**). The CMA has assessed whether the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to a frame of reference for the processing of wet gas from the NNS.
4. The Parties have a combined share of supply of the processing of wet gas from the NNS of [20–30]% (based on average gas throughput over the last five years).

5. The evidence received by the CMA indicates that there has been limited (if any) competitive interaction between the Parties pre-Merger. The pipelines feeding the Parties' gas processing facilities are relatively distant from each other and currently serve customers' gas fields in different areas. For this reason, most customers told the CMA that the Parties' are not close alternatives. Evidence provided to the CMA showed that, in the last five years, no customers have sent requests for service (**RFS**) (a process similar to asking for a quote) to both Parties, indicating that the Parties are not considered to be alternatives. The CMA therefore considers that the constraint between the Parties which would be lost as a result of the Merger is not material.
6. The CMA also found that, post-Merger, the merged entity's processing plants would be sufficiently constrained by a number of other gas processing plants in the NNS, which have spare capacity, in the short to medium term.
7. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in the processing of wet gas from the NNS as a result of horizontal unilateral effects.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

9. NSMP is currently active in the processing of gas from the NNS through its indirect ownership of the Teesside Gas Processing Plant (**TGPP**). NSMP has no interests in the transportation of gas via pipelines in the NNS. The UK turnover of NSMP in the financial year to December 2014 was £67.5 million.
10. Total is part of the Total Group, an integrated energy producer active in the exploration, production and sale of oil and gas and the refinement and transformation of crude oil into finished products. The Target Business is active in both the processing of gas from the NNS through its interest in the St Fergus Plant and the transportation of gas via pipeline in the NNS through its interest in the FRIGG UK offshore pipeline and SIRGE. The UK turnover of the Target Business in 2014 was £[§] million.

## Transaction

11. On 27 August 2015, NSMP (through its subsidiary, NSMP Operations Limited) entered into a sale and purchase agreement to purchase the Target Business from Total.

## Jurisdiction

12. The transaction includes the acquisition of a 100% interest in FUKA and a 67.04% interest in SIRGE, including associated customer contracts. The operatorship of FUKA and SIRGE will be transferred to NSMP, which will enter into an operating and maintenance agreement with px Group Limited to oversee plant operations and maintenance. All staff at the St Fergus Plant and a number of Total employees employed in connection with the Target Business will be transferred to px Group Limited pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.
13. The CMA considers these assets together constitute an enterprise within the meaning of section 129 of the Act and that, as a result of the Merger, the enterprises of NSMP and the Target Business will cease to be distinct.<sup>1</sup>
14. The Parties overlap in the processing of wet gas from the NNS, with a combined share of supply of [20–30]% (increment of [5–15]%) based on average gas throughput over the last five years (see Table 1 below). The CMA therefore considers that the share of supply test in section 23 of the Act is met.
15. The CMA 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act commenced on 14 October 2015 and the statutory 40-working-day deadline for a decision is therefore 8 December 2015.

## Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where,

---

<sup>1</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), paragraph 4.8.

based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the merging parties.<sup>2</sup>

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## **Frame of reference**

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>3</sup>
20. The Parties overlap in relation to the processing of wet gas from the NNS.<sup>4</sup> The overlap arises as a result of NSMP's ownership of TGPP and Total's interest in the St Fergus Plant. TGPP has two processing systems (known as 'trains'):
- (a) TGPP Train 1 processes dry/lean gas from the Breagh field in the Southern North Sea (**SNS**).
  - (b) TGPP Train 2 processes wet gas from fields in the NNS.
21. As TGPP Train 1 processes dry gas from the SNS, it does not overlap with Total's operations.

## **Product scope**

22. The natural gas industry can be divided into three sectors: an upstream sector (exploration, development and production of natural gas), a midstream sector

---

<sup>2</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>3</sup> *Merger Assessment Guidelines*, paragraph 5.2.2.

<sup>4</sup> Wet gas (also known as rich gas) refers to natural gas which contains high levels of natural gas liquids (ie propane, butane and condensate) that can be extracted during processing and sold. By contrast, lean gas contains a much lower level of natural gas liquids (predominantly heavy condensate, but little propane or butane).

(transportation and processing) and a downstream sector (wholesale, distribution and retailing of natural gas and natural gas liquids). The Merger relates to the midstream sector.

23. Unprocessed gas emerging from the well head of a production facility (ie the upstream sector) often requires transportation by pipeline to a facility at which it is processed. During processing, the gaseous and liquid constituents are separated and the gaseous stream undergoes further processing/purification in order to produce gaseous hydrocarbons meeting the technical specification necessary for carriage in the transmission system into which it will be introduced. The transmission system transports gas to local distribution networks which deliver gas to end consumers.<sup>5</sup>
24. The Parties submitted that the relevant frame of reference is the processing of natural gas, noting that, in a number of past decisions, both the European Commission (**Commission**) and the Office of Fair Trading (**OFT**) have found that the market for processing of natural gas from the North Sea is distinct from the market for gas transport.
25. In *Centrica/Venture Production*, the Commission noted that whilst owners of natural gas fields require both transport and processing to be able to market their gas, pipelines and processing facilities fulfil different functions and, as such, it was appropriate to separate the transport and processing markets to reflect the differing competitive conditions.<sup>6</sup> In *Talisman/Paladin*, the OFT considered that it may be appropriate to distinguish between infrastructure for oil and gas and between pipelines and processing terminals.<sup>7</sup>
26. Customers responding to the CMA's enquiries indicated that they use gas processing plants to process their gas and none of these customers indicated that there were any alternatives. Some noted that the pipeline is a consideration in deciding which processing plant to use, but it may not be the determining factor.
27. The CMA considered whether segmentation by type of gas was necessary. However, the Parties submitted that all gas in the NNS is wet gas and the CMA did not receive any evidence to contradict this. The CMA has therefore considered the impact of the Merger in relation to the processing of wet gas.

---

<sup>5</sup> Case IV/M.1532 - BP Amoco/Arco, paragraph 39.

<sup>6</sup> COMP/M.5585: [Centrica/Venture Production](#), Commission decision, 21 August 2009, paragraph 12.

<sup>7</sup> ME/2080/05: [Anticipated acquisition by Talisman Energy Resources Limited of Paladin Resources plc](#), OFT decision, 12 December 2005, paragraph 11.

## ***Geographic scope***

28. The Parties submitted that the relevant geographic frame of reference is the NNS, noting that gas from the NNS is different from gas from the SNS (as all gas from the NNS is wet gas while the gas in the SNS is lean gas).
29. In *Centrica/Venture Production*, the Commission distinguished between the NNS (ie the area of UK North Sea lying to the north of latitude 55° N) and the SNS (ie the area of the UK North Sea lying to the south of latitude 55° S) in relation to the relevant geographic markets for the transportation and processing of gas.<sup>8</sup> In *Talisman/Paladin*, the OFT noted that NNS and SNS pipelines serving processing facilities are not interchangeable.<sup>9</sup> The evidence that the CMA received from third parties was consistent with a geographic frame of reference for the NNS.
30. The CMA has therefore assessed the impact of the Merger against a geographic frame of reference for the NNS.

## ***Conclusion on frame of reference***

31. For the reasons set out above, the CMA has considered the impact of the Merger in relation to the processing of wet gas from the NNS.

## **Competitive assessment**

### ***Horizontal unilateral effects***

32. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>10</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.
33. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to unilateral horizontal effects in the processing of wet gas from the NNS. This theory of harm relates to competition for future contracts to process wet gas from the NNS, as existing contracts are entered into on a 'life of field' basis with price and quality parameters set for the life of the contract. Accordingly, any SLC would not impact existing contracts.

---

<sup>8</sup> [Centrica/Venture Production](#), paragraph 13.

<sup>9</sup> [Talisman/Paladin](#), paragraph 12.

<sup>10</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

34. The CMA also considered whether the scope for harm resulting from any SLC would be mitigated by the relevant regulatory framework. The Parties submitted that customers negotiating gas processing contracts would benefit from the statutory oversight from the Secretary of State (through the Department for Energy and Climate Change (**DECC**) and the Oil and Gas Authority (**OGA**)) in respect of access conditions for North Sea gas infrastructure, noting that the provisions of the Gas Act 1995 and the Energy Act 2011 provide the Secretary of State with the power to impose terms on gas processing operators. In addition, under proposals in the Energy Bill 2015, the OGA will have a range of powers including issuing fines, revoking licences and issuing improvement notices to ensure that companies comply with the terms of their licences and maximise economic recovery.
35. Furthermore, all current North Sea gas infrastructure owners (including the Parties) have agreed to be guided by the principles and procedures of the Infrastructure Code of Practice (**ICoP**) which is an industry code of practice seeking to offer protection from any attempt by infrastructure owners either to foreclose infrastructure access to owners of gas fields or to impose tariffs that are inconsistent with commercial practice. Whilst adherence to the ICoP is voluntary, it is one of the factors that OGA/DECC will take into account in deciding whether to exercise its statutory regulatory powers.
36. Some customers that provided feedback to the CMA indicated that they considered the regulatory framework to be effective in protecting them from prices increases. However, others did not consider regulation to provide full protection. On a cautious basis, the CMA assessed the Merger on the basis that any SLC in this market may result in adverse outcomes for customers, notwithstanding the regulatory framework.

#### *Shares of supply*

37. The Parties provided the CMA with shares of supply of gas throughput for the Parties and their competitors in the NNS for 2010 to 2014 based on internal information and information sourced from DECC. These are shown in Table 1 below. The CMA received insufficient responses from competitors to verify these shares of supply; however, this information is based on published DECC data.

**Table 1: Shares of supply of gas throughput in the NNS 2010 to 2014**

	%				
<i>Terminals</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>
St Fergus (Total)	[10–20]	[10–20]	[10–20]	[10–20]	[10–20]
TGPP	[5–15]	[5–15]	[5–15]	[5–15]	[5–15]
<b>Combined entity</b>	<b>[20–30]</b>	<b>[20–30]</b>	<b>[20–30]</b>	<b>[20–30]</b>	<b>[20–30]</b>
St Fergus (SEGAL)	[15–25]	[15–25]	[25–35]	[25–35]	[30–40]
St Fergus (SAGE)	[20–30]	[25–35]	[25–35]	[20–30]	[15–25]
CATS	[10–20]	[10–20]	[10–20]	[5–15]	[10–20]
Bacton (SEAL)	[15–25]	[15–25]	[5–15]	[5–15]	[10–20]

Source: Data submitted by the Parties, DECC.

38. The CMA notes that, post-Merger, the Shell-Esso Gas and Liquids (**SEGAL**) and Scottish Area Gas Evacuation (**SAGE**) gas processing plants at St Fergus will have shares of supply of around [20–30]% and [20–30]%, respectively, based on average gas throughput over the last five years. Additionally, the CATS and Bacton plants have significant shares of supply, which suggests that, in total, there would remain four significant competitors to the merged entity.

#### *Closeness of competition*

39. The Parties submitted that the key parameters for customers choosing between alternative processing plants are distance to the pipeline that serves the processing plant and the availability of spare capacity at the plant. Feedback received from third parties during the CMA's investigation was consistent with this submission. Distance is a key parameter because a gas field must invest in a secondary or spur pipeline to connect to the main transportation pipeline serving a processing plant. The greater the distance over which the gas field must connect, the greater the cost.
40. The Parties submitted that NSMP's TGPP Train 2 and Total's St Fergus Plant pose no competitive constraint on each other, as they are 285 miles apart, with several viable competitors (ie alternative pipeline routes to other processing plants that are already operational) between them. Whilst it is theoretically possible for a field owner to connect to either the FRIGG (serving Total's St Fergus Plant) or CATS pipeline (serving NSMP's TGPP), the cost of building spur pipelines renders this option, for the vast majority of gas fields, extremely unlikely. In practice, gas fields will tend to connect to the pipeline systems that are closest in distance to the gas field development.
41. Four customers told the CMA that the TGPP Train 2 and the St Fergus Plant are generally not considered to be close competitors due to the distance between the two. Customers also told the CMA that there are closer alternatives for each of TGPP Train 2 and the St Fergus Plant. One of these customers explained that it is rarely economic to transport gas further than the



nearest pipeline for a marginally lower processing fee. One third party noted that there were unlikely to be field operators for which the TGPP and St Fergus Plants were both feasible options, as it would not be economical to use both pipelines taking into account the distance between them. The CMA also notes that TGPP Train 2 and the St Fergus Plant currently serve customer gas fields in different areas.

42. The Parties' ability to compete against each other for new business absent the Merger will also depend on the spare capacity of their respective plants.
43. The Parties submitted that TGPP Train 2 and the St Fergus Plant currently have [X] capacity available. [X]
44. The Parties also submitted data on RFS received by either Party since October 2009. The RFS (or Statement of Requirements) is typically used by field developers to request quotes for the provision of transportation and/or gas processing services. A field operator will set out in its RFS the field's likely production profile and request the infrastructure owner to provide information on the volume and timing of spare capacity in the infrastructure, and whether that capacity can be made available on a firm-booked basis or only a 'reasonable endeavours' basis. The Parties provided data showing that an RFS from the same gas field has not been sent to both NSMP and Total in the last five years. This provides an indication that the Parties are not alternatives to each other.
45. The evidence before the CMA therefore shows that the Parties do not closely compete and, accordingly, there is a limited constraint (if any) that would be lost as a result of the Merger.

#### *Competitive constraints*

46. The Parties submitted that there will be a significant number of competitors remaining post-Merger that would sufficiently constrain the merged entity.
47. With regard to Total's St Fergus Plant, third parties told the CMA that there are two other gas processing plants located at St Fergus that are closer competitors to the St Fergus Plant than NSMP's TGPP. These are:
  - (a) the SAGE gas processing plant operated by Apache, which is currently served by two pipelines, the SAGE and Britannia pipelines; and
  - (b) the SEGAL gas processing plant operated by Shell, which is served by the Far North Liquids and Associated Gas System and the Fulmar Gas Line pipelines.

48. With regard to NSMP's TGPP Train 2, third parties indicated that there is closer and stronger competition from the CATS plant at Teesside, controlled by Antin.
49. The three competitors responding to the CMA's enquiries indicated that they have high and increasing spare capacity (between 50% and 70% over the next four years) and do not expect to be capacity constrained in the future. This is consistent with the view of the Commission in *BG Group/Royal Dutch Shell*, where it is noted that, in relation to the North Sea, significant spare oil and gas transport and processing capacity exists in the North Sea region.<sup>11</sup> As such, these competitors will be in a position to compete for new business following the Merger.
50. The CMA therefore considers that there will be a sufficient number of effective competitors remaining post-Merger to sufficiently constrain the merged entity.

#### *Conclusion on horizontal unilateral effects*

51. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the processing of wet gas from the NNS.

### **Third party views**

52. The CMA contacted customers and competitors of the Parties and received eight responses from customers and three responses from competitors. No customers or competitors raised any concerns about the Merger.

### **Conclusion on substantial lessening of competition**

53. Based on the evidence set out above, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the processing of wet gas from the NNS.

### **Decision**

54. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
55. The Merger will therefore not be referred under section 33(1) of the Act.

---

<sup>11</sup> Case COMP/M.7631 - [Royal Dutch Shell/BG Group](#), 2 September 2015.

**Jonathan Parker**  
**Director of Mergers**  
**Competition and Markets Authority**  
**12 November 2015**