



EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.10438 - MOL / OMV SLOVENIJA

(Only the English text is authentic)

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 8/(2) Regulation (EC) 139/2004
Date: 17/05/2023

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Brussels, 17.5.2023
C(2023) 3183 final

COMMISSION DECISION

of 17.5.2023

**declaring a concentration to be compatible with the internal market and the EEA
agreement**

(Case M.10438 – MOL / OMV SLOVENIJA)

(Only the ENGLISH text is authentic)

TABLE OF CONTENTS

1.	INTRODUCTION.....	4
2.	THE PARTIES.....	4
3.	THE CONCENTRATION	5
4.	UNION DIMENSION	5
5.	THE PROCEDURE	5
6.	OVERVIEW OF PARTIES' OVERLAPS AND THE SLOVENIAN FUEL SECTOR	7
6.1.	Affected markets	7
6.2.	Overview of the Slovenian motor fuel sector	8
7.	HORIZONTALLY AFFECTED MARKETS	12
7.1.	Market definition.....	12
7.2.	Retail markets.....	12
7.2.1.	Retail supply of motor fuels (Slovenia)	12
7.2.1.1.	Product market definition.....	12
7.2.1.2.	Geographic market definition	22
7.2.1.3.	Competitive assessment: horizontal non-coordinated effects	25
7.2.1.4.	Competitive assessment: horizontal coordinated effects	61
7.2.2.	Retail supply of AdBlue (Slovenia).....	97
7.2.2.1.	Market definition.....	97
7.2.2.2.	Competitive assessment	98
7.3.	Wholesale markets	99
7.3.1.	Introduction.....	99
7.3.2.	Non-retail supply of diesel and gasoline in Slovenia.....	100
7.3.2.1.	Market definition.....	100
7.3.2.2.	Competitive assessment	103
7.3.3.	Non-retail supply of heating oil (Slovenia).....	106
7.3.3.1.	Product market definition.....	106
7.3.3.2.	Competitive assessment	108
7.3.4.	Wholesale supply of bitumen (Slovenia).....	109
7.3.4.1.	Market definition.....	109
7.3.4.2.	Competitive assessment	111
7.3.5.	Non-retail supply of diesel and gasoline in Croatia.....	112
7.3.5.1.	Market definition.....	112
7.3.5.2.	Competitive assessment	114
7.3.6.	Non-retail supply of heating oil (Croatia).....	115

7.3.6.1. Market definition.....	115
7.3.6.2. Competitive assessment	116
7.3.7. Non-retail supply of heavy fuel oil (Croatia).....	117
7.3.7.1. Market definition.....	117
7.3.7.2. Competitive assessment	118
8. VERTICALLY AFFECTED MARKETS	119
8.1. Ex-refinery supply of diesel and gasoline in Slovenia (upstream markets) and non-retail supply of motor fuels (diesel and gasoline) in Slovenia (downstream markets)	120
8.1.1. Market shares and market structure	120
8.1.2. Notifying Party's view	121
8.1.3. Commission's assessment.....	121
8.2. Wholesale (ex-refinery and non-retail) supply of diesel and gasoline in Slovenia (upstream market) and retail supply of motor fuels in Slovenia (downstream market)	122
8.2.1. Market structure	122
8.2.2. Notifying Party's view	122
8.2.3. Commission's assessment.....	123
8.2.3.1. Input foreclosure	123
8.2.3.2. Customer foreclosure	124
9. EFFICIENCIES.....	125
9.1. Notifying Party's view	125
9.2. Commission's assessment.....	126
9.3. Conclusion on efficiencies	128
10. GENERAL CONCLUSION	129
11. COMMITMENTS.....	129
11.1. Analytical framework.....	129
11.2. Description of the proposed commitments	130
11.3. Commission's assessment of the Commitments.....	133
11.3.1. Suitability to remove serious doubts	133
11.3.2. Viability of the divestment business	135
11.3.3. Conclusion on the Proposed Commitments	137
12. PURCHASER APPROVAL	137
12.1. Assessment of the suitability of the purchaser	137
12.1.1. Framework of the Commission's assessment of the purchaser	137
12.1.2. The purchaser is independent and unconnected to the parties	138
12.1.3. The purchaser has sufficient financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business.....	138

12.1.4.	The acquisition will not create prima facie competition concerns.....	139
12.1.5.	Conclusion on suitability of the purchaser.....	139
12.1.6.	Results of the market test	139
12.2.	Assessment of the proposed agreement	140
12.3.	Conclusion on the proposed purchaser and agreement.....	141
13.	CONDITIONS AND OBLIGATIONS.....	141

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 22 June 2022 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case²,

Whereas:

1. INTRODUCTION

- (1) On 13 May 2022 the European Commission received notification of a proposed concentration pursuant to Article 3(1)(b) of Regulation (EC) No 139/2004 (the 'Merger Regulation') by which MOL Hungarian Oil and Gas Plc. ('MOL' or the 'Notifying Party') acquires from the OMV Group sole control over OMV SLOVENIJA, trgovina z nafto in naftnimi derivati, d.o.o. ('OMV Slovenija' or the 'Target') by way of purchase of shares (the 'Transaction'). MOL and OMV Slovenija are collectively referred to as the 'Parties'.

2. THE PARTIES

- (2) MOL, headquartered in Hungary, is the parent company of the MOL Group, a vertically integrated oil and gas conglomerate whose principal activities are: (i) the exploration, production and refining of crude oil; (ii) the distribution of refined oil products both at wholesale and retail level; (iii) the production and sale of petrochemicals; (iv) the exploration and production of natural gas; and (v) the

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.

² Final report of the Hearing Officer of 4 May 2023.

transmission of natural gas in Hungary. In Slovenia, the MOL Group operates a network of 53 fuel stations under the MOL and INA brands, and it is also active in the wholesale supply of motor fuels, bitumen, heating oil, liquefied petroleum gas ('LPG'), and lubricants. MOL is also present, through its subsidiary INA, in a number of retail and wholesale markets in Croatia such as the supply of motor fuels (diesel and gasoline), AdBlue, heating oil or bitumen.

- (3) OMV Slovenija, headquartered in Slovenia, operates 119 fuel stations in Slovenia under the OMV, OMV Viva, Diskont, Avanti and EuroTruck brands and is also active in the wholesale supply of motor fuels, heating oil and bitumen. OMV Slovenija also makes certain ex-refinery sales of gasoline, which are carved out from the scope of the Transaction and will remain with the OMV Group. In Croatia, OMV Slovenija has very limited activities in the wholesale of motor fuels, heating oil and heavy fuel oil.

3. THE CONCENTRATION

- (4) The Transaction consists in the acquisition of OMV Slovenija by MOL under a share deal. MOL Group will become a 100% shareholder in OMV Slovenija by adding shares representing 92.75% of OMV Slovenija's share capital to its existing shareholding.³ MOL will take over OMV Slovenija's business, which includes OMV Slovenija's fuel stations and all of its other assets and activities, including its wholesale business (gasoline, diesel, heating oil and bitumen).
- (5) It follows that the Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate global turnover of more than EUR 5,000 million (MOL: EUR [...] million; Target: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million in the last respective full financial year (MOL: EUR [...] million; Target: EUR [...] million) and only OMV Slovenija achieved more than two-thirds of its EU-wide turnover in Slovenia.
- (7) The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

5. THE PROCEDURE

- (8) On 13 May 2022, the Parties notified the Transaction to the Commission. Initially, the Notifying Party submitted on 23 September 2021 a request, pursuant to Article 4(4) of the Merger Regulation, to refer the case to the Slovenian Competition Protection Agency ('SCPA'), which was rejected by the Commission following the disagreement expressed by Slovenia.⁴

³ Pre-Transaction, INA d.d. ('INA'), headquartered in Croatia and controlled solely by MOL, holds 7.25% of the Target's shares. Post-Transaction, [details on MOL's post-Transaction strategic decisions as regards the Target's ownership structure] (Form CO, paragraphs 43 and 58).

⁴ By letter of 11.10.2021, the Slovenian Competition Protection Agency, as the competent authority of Slovenia, informed the Commission that Slovenia disagreed with the referral request and, by decision of 28.10.2021, the Commission declared that it remained competent to examine the Transaction.

- (9) The Commission sought the views of the market at a number of stages during the investigation. Prior to notification of the Transaction, the Commission held calls with 13 market participants, including customers and competitors in the different markets relevant to the Transaction.
- (10) During the market investigation in Phase I, in addition to requests for information sent to the Parties, the Commission sent 7 sets of eQuestionnaires to close to 150 market participants, including customers and competitors in the markets affected by the Transaction.
- (11) Based on the market investigation in Phase I, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA agreement and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 22 June 2022 (the ‘Article 6(1)(c) Decision’).
- (12) Specifically, the Commission raised concerns in relation to the market for the retail supply of motor fuels in Slovenia to business-to-consumer (B2C) customers from off-motorways stations (or, given the specific features of the Slovenian market, from ‘non-DARS stations’, as explained in recital (46) below); hereinafter, the ‘market for the retail supply of motor fuels to B2C customers from non-DARS stations’. Moreover, the Commission could not exclude serious doubts in relation to the markets for the retail supply of motor fuel to business-to-business (B2B) customers in Slovenia and for the wholesale supply (ex-refinery and non-retail) of gasoline and diesel in Slovenia.
- (13) In line with paragraphs 45 and 46 of the Best Practices on the conduct of EU merger control proceedings, the Commission provided a number of key documents to the Parties on 23 June 2022.
- (14) The Parties submitted their written comments on the Article 6(1)(c) Decision on 2 July 2022.
- (15) On 8 July 2022 a State of Play meeting took place between the Commission and the Parties.
- (16) During the Phase II market investigation, the Commission sent more than 14 requests for information to the Notifying Party, as well as sending formal requests for information to some of the Parties competitors. The Commission also sent three sets of eQuestionnaires and held conference calls with the Parties’ competitors and customers in the markets where it had raised serious doubts and where serious doubts could not have been excluded. In addition, the Commission received responses from over 4,100 B2C customers of MOL and OMV Slovenija to a short questionnaire.
- (17) On 15 July 2022, the Commission adopted two decisions pursuant to Article 11(3) of the Merger Regulation requiring the Parties to supply the complete information that had been required by the Commission in different requests for information sent to the Parties. These decisions suspended the time limit referred to in Article 10(3) of the Merger Regulation pursuant to Article 9(1) of Commission Regulation (EC) No. 802/2004.⁵

⁵ Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p. 1).

- (18) On 17 March 2023, the Notifying Party formally submitted commitments and also submitted the remaining required information, which brought an end to the suspension of the time limit and resulted in the restarting of the clock on 20 March 2023.
- (19) On 20 March 2023, the Commission launched a market test on the commitments submitted. On 30 March 2023, a State of Play meeting took place between the Commission and the Parties, where the Commission informed the Parties of the results of the market test on the commitments.
- (20) The meeting with the Advisory Committee took place on 3 May 2023.
- (21) The Final Report of the Hearing Officer was issued on 4 May 2023.

6. OVERVIEW OF PARTIES' OVERLAPS AND THE SLOVENIAN FUEL SECTOR

6.1. Affected markets

- (22) The activities of MOL and OMV Slovenija, as outlined in Section 2, overlap horizontally in Slovenia in the non-retail supply of diesel and gasoline, heating oil, bitumen, and AdBlue, and in the retail supply of diesel and gasoline, LPG, heating oil, automotive lubricants, AdBlue, and convenience goods and other products and services at fuel stations.⁶
- (23) However, based on the market definitions outlined in Section 7, only the following overall markets in Slovenia are horizontally affected: non-retail supply of diesel and gasoline (see Section 7.3.1), non-retail supply of heating oil (see Section 7.3.3), wholesale supply of bitumen (see Section 7.3.4), retail supply of motor fuels (see Section 7.2.1), and retail supply of AdBlue (see Section 7.2.2).
- (24) In addition, the following markets in Slovenia are vertically affected: the ex-refinery supply of diesel and gasoline (upstream markets) and the non-retail supply of diesel and gasoline (downstream markets) (see Section 8.1), and the wholesale (ex-refinery and non-retail) supply of diesel and gasoline (upstream markets) and retail supply of diesel and gasoline (downstream markets) (see Section 8.2).
- (25) Furthermore, although OMV Slovenija has only very limited activities outside Slovenia, due to MOL's market shares in Croatia the following overall markets in Croatia are horizontally affected: non-retail supply of diesel and gasoline (see Section 7.3.5), non-retail supply of heating oil (see Section 7.3.6), and non-retail supply of heavy fuel oil (see Section 7.3.7).

⁶ The Parties also both issue fuel cards, which the Notifying Party submits constitute a method of payment at fuel stations and not a separate product market (Form CO, paragraphs 176 – 178). The Commission previously found in a recent case relating to Poland that fuel cards are merely tools used to provide a differentiated offer to business (B2B) customers and that, although fuel cards are offered by fuel station operators such as the Parties as well as by (international) fuel card providers (such as DKV and UTA), analysis of any potential market for the issuance of fuel cards was not warranted (Case M.9014 – *PKN Orlen / Grupa Lotos*, paragraphs 632 – 634). The situation is the same in Slovenia (i.e. fuel cards are offered by fuel station operators and fuel card providers) and therefore the same approach will be taken in this Decision, where fuel cards will only be discussed in the context of the market for retail supply of motor fuels to B2B customers.

- (26) It follows that the Transaction gives rise to a number of affected markets which will be discussed in the relevant sections of this Decision. The remaining overlapping or vertically-linked activities of the Parties that do not result in affected markets will not be further discussed in this Decision.

6.2. Overview of the Slovenian motor fuel sector

- (27) Slovenia is one of the smaller Member States with a population of approximately 2 million and without any domestic motor fuel production, meaning that all motor fuel is imported. The retail supply of motor fuel in Slovenia presents some very specific features, which are outlined in this Section as they are relevant for the market definitions and competitive assessment discussed throughout this Decision.
- (28) *First*, on the overall motor fuel retail market, in Slovenia there are only three competitors (Petrol, OMV Slovenija and MOL) with a meaningful national network, plus Shell, which is mostly present in the B2B segment, and a handful of smaller competitors. More precisely:
- The incumbent Petrol, partially State-owned, is by far the largest operator on the retail motor fuel market in Slovenia with 313 fuel stations. In total, Petrol operates approximately 600 fuel stations in Slovenia, Croatia, Bosnia-Herzegovina, Montenegro and Serbia. Petrol is active at the wholesale and the retail level. While Petrol does not own production facilities, it is the owner of 3 fuel storage depots in Slovenia, including the main sea entry point of Slovenia, the Instalacija fuel storage depot. As a result, Petrol is both the main fuel importer and the main fuel retailer in Slovenia.⁷
 - OMV Slovenija is the second largest player in Slovenia with 119⁸ fuel stations under various brands: OMV (59 fuel stations), OMV Viva (48 fuel stations), Diskont (6 fuel stations), Avanti (2 fuel stations) and Eurotruck (4 stations). Most of its stations are manned to the exception of the ones under the Avanti, Diskont and Eurotruck brands (12 in total).⁹ OMV is active at both the wholesale and the retail level. The Target is mostly active in Slovenia. OMV Group, the seller in this Transaction, currently supplies most of its retail stations in Slovenia from [details on the Target's supply sources for its fuel stations in Slovenia]. OMV Group has rented part of Petrol's depot facilities in Instalacija to supply the Slovenian market. It also rents some storage capacities at Luka Koper in Slovenia.
 - MOL is the third largest player in Slovenia with 53 fuel stations. In total, it operates approximately 2,000 fuel stations in nine countries (Hungary, Romania, Serbia, Montenegro, Bosnia-Herzegovina, Croatia, Slovenia, Czechia and Slovakia).¹⁰ It is active both at the wholesale and the retail level. At retail level, it operates under six brands across the nine countries in which it is active. In Slovenia specifically, it operates under two brands: MOL (48 stations) and INA

⁷ Form CO, paragraph 302.

⁸ Station-level data provided by the Parties. Based on the data provided by the Parties, OMV used to have 120 stations. However, during the procedure, one of OMV's stations (station O3540) went through an insolvency proceeding and has been auctioned out on 25 August 2022. As a result, the ownership of the plot and building were transferred to the buyer.

⁹ Form CO, paragraph 297.

¹⁰ MOL, Investors' Presentation dated November 2022, available here: https://molgroup.info/storage/documents/publications/investor_presentations/2022/mol_ir_presentation_nov_2022.pdf

(5 stations¹¹). MOL has been significantly expanding its network over the past years in the Central and Eastern European ('CEE') countries, including in Slovenia.¹² In Slovenia, MOL acquired 11 stations in 2011 from TUS Oil Holding and 17 stations in 2016 from ENI. It is the only player that has expanded in such a way in Slovenia. The expansion of its retail network is part of its 2030+ Shape Tomorrow strategy update.¹³ MOL owns several refineries and depots close to Slovenia (such as in Rijeka in Croatia). It also has a rented storage facility in Luka Koper in Slovenia that allows access to seaborne sources.

- Shell is the fourth largest player in volume with only nine stations, eight of which are trucks-only stations. In Europe, Shell owns interests in six refineries, including four in Germany (Hamburg, Miro, Rhineland and Schwedt).
 - There are a few small networks, most of them operating fewer than three stations, with the exception of Maxen which operates 21 unmanned stations and Logo which operates 10 stations (including three unmanned trucks-only stations) with limited volumes. Most of these smaller players do not have their own supply sources and source to a significant extent from Petrol and OMV Slovenija.¹⁴
- (29) *Second*, the Slovenian motor fuel market underwent major changes recently with the full liberalisation of the market, which was gradually introduced between 2016 and October 2020. In March 2022, following Russia's war of aggression against Ukraine, the Slovenian government reinstated price regulation.¹⁵
- (30) As explained by the Notifying Party,¹⁶ prior to the liberalisation of the market, the maximum level of the retail motor fuel price¹⁷ was regulated by government decrees, which set out the methodology for the calculation of the maximum price. The formula concerned fuel price quotations and described the maximum margins. As maximum prices were set at a level leaving almost no margins to retailers, they generally set pump/totem¹⁸ prices at the maximum price calculated based on the regulation. As a result, prices were very similar between the various retailers all over the Slovenian territory and fuel retailers competed only to a limited extent on prices.

¹¹ One additional INA station does not provide diesel/gasoline but only LPG and will not be included in the rest of the assessment.

¹² MOL acquired 19 stations from TUS Oil Holding in Slovenia in 2011, ENI Slovenija and ENI Hungaria (see Case M.7849 – *MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*) in 2016, 5 stations in Hungary in 2018, 5 fuel stations in Montenegro in 2019, Normbenz Slovakia s.r.o. by Slovnaft that included 16 fuel stations in Slovakia in 2022. It also acquired the Polish fuel retail company Lotos Paliwa in 2022. Form CO, paragraph 33.

¹³ Form CO, paragraph 6: "*According to the Notifying Party, under this recently published strategy update, MOL Group seeks new opportunities to become the first choice of customers as a best-in-class digitally-driven consumer goods retailer and an integrated, complex mobility service provider by 2030. MOL Group's ambition is to provide (i) an alternative fuel portfolio and complex mobility services; (ii) further develop the food and convenience offers; and (iii) diversify sales channels through integrated digital platforms and franchise models, expand its fuel station network. As apparent from the above, retail is in the core of MOL Group's long term strategy and its development plans are centred around innovation and customer focus.*"

¹⁴ Non-confidential replies to question 56 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

¹⁵ Form CO, Annex 65.

¹⁶ Form CO, paragraph 326.

¹⁷ As explained by the Notifying Party, before partial liberalisation in 2016, price regulation applied at national level without any local and regional variations and without any distinction between highway and off-highway stations. The regulation determined maximum prices uniformly to all fuel stations and both main grade and premium fuels in Slovenia. This means that price regulation applied also to gasoline 98 (see Notifying Party's reply to RFI 35).

¹⁸ A totem is the digital display on which the prices are displayed at the entrance of the fuel station.

The consequence of the regulation was that pricing *de facto* was national, without any significant local or regional distinction or distinction per type of station (on-motorway / off-motorway).

- (31) The liberalisation process started in 2016, notably for prices at motorway stations,¹⁹ but it was only in October 2020 that pricing regulation was lifted for all fuel stations and all motor fuels.²⁰ Following liberalisation in October 2020, the retailers' margins have significantly increased. In that respect, the SCPA explained in its 2021 survey report that it: *"observed that most bidders [fuel retailers] increased their margins after deregulation and therefore the increase in fuel prices was influenced not only by the purchase price, which naturally represents the largest part of the fuel price, but also by the possibility of pricing at higher prices, which was limited before deregulation"*.²¹ It should be noted that the increase in margins can be explained to a certain extent by the fact that margins in Slovenia were artificially low under the price regulation. The former price regulation allowed for a limited margin on top of the CIF MED quotation prices²² for main grade fuels: a EUR 8.16 cent margin for diesel and a EUR 8.70 cent margin for gasoline.²³ As pointed out by the Parties based on their own margin data,²⁴ these margins were lower than the average European retail margins. The liberalisation process and the subsequent increase in margins has also allowed for the introduction of premium diesel products.²⁵
- (32) Following the lifting of the price regulation, pricing has so far remained unsophisticated when compared to other countries. For example, no operator uses pricing algorithms and pricing remains national to a great extent.²⁶ As explained in further detail in recital (347), monitoring is done by manually checking the prices published on the national website 'goriva.si', mainly at national level, and price updates generally take place only once or twice per week.²⁷ Additional changes might occur during the week if the retailer considers that its pricing is not properly positioned as compared to its competitors. However, as explained in recital (85), pricing is expected to be increasingly set at a local level in the near future, meaning that the retailers²⁸ might start to introduce differentiated prices in their stations based on local elements.

¹⁹ The liberalisation process started from 12 April 2016, when price regulation has first been lifted for 100-octane gasoline and gasoline 98 at all fuel stations. From 9 November 2016, highway stations were exempted from the regulation, meaning that no maximum price applied at highway stations either to main grade or to premium product (see Notifying Party's reply to RFI 35).

²⁰ Form CO, paragraph 329.

²¹ Free translation from the Motor fuel market investigation II, dated December 2021: Javna agencija Republike Slovenije za varstvo konkurence: Raziskave (varstvo-konkurence.si).

²² CIF (cost, insurance, freight) is an international shipping agreement, which represents the charges paid by a seller to cover the costs, insurance, and freight of a buyer's order while the cargo is in transit. CIF MED (MED is short for Mediterranean) consists of the CIF assessment for routes in the Mediterranean. CIF MED quotation prices are being published daily by Platt's European Marketscan and are being predominantly used for setting the retail prices on the markets in countries gravitating towards the Mediterranean, including Slovenia (Notifying Party's reply to RFI 1, question 62).

²³ Form CO, paragraph 330.

²⁴ Form CO, Annex 26.

²⁵ Form CO, paragraph 332.

²⁶ As mentioned in recital (85)(c), some regional pricing can be seen for OMV Slovenija at the border with Italy as well as for stations with seasonal pricing.

²⁷ For a more detailed presentation of price setting mechanisms, please see Section 7.2.1.4.3.1.3.

²⁸ Currently only OMV Slovenija has some local prices.

- (33) After the start of Russia's war of aggression against Ukraine, due to energy price increases, the Slovenian government decided to reintroduce price regulation based on a price cap for a temporary period.²⁹ First, on 14 March 2022, the government issued a price cap for the retail sales price of gasoline 95 and diesel for 30 days.³⁰ On 31 March 2022, the government amended the applicable regulation and prolonged the validity of the maximum retail price until the end of April 2022, and determined a maximum wholesale price.³¹ On 11 May 2022, the government issued again a price cap for gasoline 95 and diesel until 10 August 2022.³² On 15 June 2022, a new Decree was adopted for a period of one year, valid from 21 June 2022 until 20 June 2023.³³ In this Decree, the Slovenian government has fully liberalised highway prices, as well as the prices of premium gasoline (including gasoline 98) and premium diesel. There are indications that price regulation may be prolonged and will continue into 2024.³⁴
- (34) Similarly to the price regulation applicable before liberalisation in 2020, the current Decree introduced a price formula for motor fuel products (95-octane gasoline and diesel at non-motorway³⁵ (highway and expressway) fuel stations).³⁶ Overall, the reintroduction of this price cap had a negative effect on the fuel retailers' margins, in particular as the regulation does not take into account the biofuel cost³⁷ (which was considered in the formula used under the past price regulation). Retail fuel suppliers consider that the level of maximum margin has been set too low to cover the cost of operations.³⁸
- (35) The Commission will take into account the specific features of the Slovenian market in its competitive assessment and in particular the highly concentrated nature of the market, the peculiar price setting mechanisms and the impact on the price regulation on competition. On this last point, the Commission takes the view that the past and current price regulation has limited and still limits the incentive of the fuel retailers to compete on prices on a product that is generally considered to be a commodity. The international and national context has also very likely altered to a certain extent the results of the Phase I and Phase II market investigations as it was difficult for market players to take a position when energy prices increased greatly at an international level and Slovenia has imposed again price regulation.³⁹ Nevertheless,

²⁹ Notifying Party's reply to RFI 8, question 6.

³⁰ <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-0709?sop=2022-01-0709>

³¹ <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-0920?sop=2022-01-0920>

³² <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-1534?sop=2022-01-1534>

³³ <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED8597>

³⁴ Notifying Party's reply to RFI 28: "Plan for Adjustment of Regulated Prices for the years 2023 and 2024", a government proposal for a resolution.

³⁵ Initially, in March 2022, the price regulation applied to all stations, both on and off-motorways. In June 2022, the price regulation was prolonged, but only for off-motorways stations.

³⁶ Notifying Party's reply to RFI 15, question 1.

³⁷ Biofuel is blended into the diesel and gasoline before being sold to customers, in accordance with the Slovenian regulation (in 2021, 10.1% of the diesel and gasoline used in Slovenia must come from a renewable source). The obligation to meet the prescribed targets falls on distributors and companies that sell motor fuels to end customers (see Annex 65 of the Form CO). Biofuel is not sold as a standalone product to customers in Slovenia.

³⁸ Notifying Party's reply to RFI 15, question 1.

³⁹ For example, in the course of the Phase I market investigation, a majority of the competitors who expressed an opinion considered that, post-Transaction, the price paid by B2C customers for motor fuels sold at the retail level in Slovenia would increase and none considered that the prices would decrease. Similarly, the vast majority of the competitors considered that the intensity of competition in the motor fuel retail supply market for B2C customers in Slovenia will decrease as a result of the

the Commission takes the view that the fuel retailers have not been and are currently not prevented from competing, in particular on competition parameters other than price. The Commission will also examine in detail the other aspects of competition on this market, in particular to assess whether the Parties are close competitors and whether the Transaction will remove a significant competitive force from the market.

7. HORIZONTALLY AFFECTED MARKETS

7.1. Market definition

- (36) Market definition is a tool to identify and define the boundaries of competition between firms.⁴⁰ It has both a product and a geographic dimension.
- (37) A relevant product market comprises all those products and services which are regarded as interchangeable or substitutable, by reason of the products' characteristics, their prices, and their intended use.⁴¹ In determining the relevant product market, the Commission assesses demand substitution by determining the range of products which are viewed as substitutes by the consumers.⁴² Demand-side substitutability is the focus of the Commission's assessment when defining the relevant markets. The Commission may also take into account supply-side substitutability, namely when its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy.⁴³ This is the case when suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.
- (38) The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁴⁴

7.2. Retail markets

7.2.1. Retail supply of motor fuels (Slovenia)

7.2.1.1. Product market definition

7.2.1.1.1. Commission's precedents

- (39) The Commission has in the past considered that the retail supply of motor fuel products constitutes a distinct relevant product market exclusively applying to

Transaction. And in the course of the Phase II market investigation, the majority of competitors that expressed an opinion consider that they would not be able to compete with the new entity. However, the Commission notes that the majority of the B2C customers who responded to the short questionnaire considered that the prices will remain roughly the same. Even though the question concerned the market absent the price regulation, the Commission considers that for B2C customers it might have been in practice difficult to detangle the impact of the Transaction and the impact of the price regulation. This could explain why the majority of the B2C customers that responded to the short questionnaire did not consider that the Transaction would have an impact on prices.

⁴⁰ Commission Notice on the definition of relevant market for the purposes of Community competition law ('Market Definition Notice'), OJ C 372, 09.12.1997, paragraph 2.

⁴¹ Market Definition Notice, paragraph 7.

⁴² Market Definition Notice, paragraph 15.

⁴³ Market Definition Notice, paragraph 20.

⁴⁴ Market Definition Notice, paragraph 8.

forecourt sales, without being sub-segmented by type of fuel product (diesel, gasoline and automotive LPG).⁴⁵

- (40) The Commission in previous decisions noted that, although no demand-side substitutability exists between the different types of fuels (as customers must use the type of fuel appropriate to their vehicle), all the different fuel types are usually available at the distribution level at the same points of sale and are therefore substitutable from the supply-side perspective.⁴⁶ The Commission has considered in the past whether there is a market for the retail sales of automotive LPG separate from that of retail sales of other motor fuels, however, it ultimately left the question open.⁴⁷
- (41) Moreover, the Commission has in the past considered a number of possible segmentations by types of fuel stations, sometimes leaving the question open, other times reaching a conclusion that such a segmentation was or was not justified on the basis of the specific characteristics of the market in question. In particular, the Commission has considered the possibility of segmenting the market for retail sales of motor fuels between sales at on-motorway and off-motorway stations;⁴⁸ between sales to B2B and to B2C customers;⁴⁹ between sales from regular stations and from dedicated truck stops;⁵⁰ between sales from marine and non-marine stations;⁵¹ or between sales from manned and unmanned stations.⁵²
- (42) For the purpose of this Decision, while all of these distinctions are discussed, only some of them are particularly relevant, namely the segmentations between on- and off-motorway stations and between B2B and B2C customers.⁵³
- (43) Regarding a possible segmentation between on- and off-motorway stations, the Commission has in the past mostly decided in favour of such a segmentation.⁵⁴ It considered that on-motorway stations are in a separate market from that for off-motorway stations in view of the notable differences in competitive conditions which characterise the sale of fuels by the two categories of service stations (such as the existence of tolls, price differences, differences in supply structure (e.g. where on-motorway stations are mostly run by premium brands), commercial offer and distinct conditions of entry, such as having to win a tender organised by a motorway operator

⁴⁵ Cases M.9014 – PKN Orlen/Grupa Lotos; M.4919 – StatoilHydro/ConocoPhillips; M.4545 – Statoil/Hydro; M.4532 – Lukoil/ConocoPhillips; and M.3516 – Repsol/Shell Portugal.

⁴⁶ Cases M.9014 – PKN Orlen/Grupa Lotos; M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija; M.4919 – Statoil Hydro/ConocoPhillips; M.3516 – Repsol YPF/Shell Portugal; and M.3291 – Preem/Skandinaviska Raffinaderi.

⁴⁷ Cases M.9014 – PKN Orlen/Grupa Lotos; M.7680 – DCC Group/Butagaz; M.7311 – MOL/Eni Ceska/Eni Romania/Eni Slovensko; M.5005 – Galp Energia/Exxonmobil Iberia; and M.7161 – DCC Energy/Qstar Försäljning/Qstar/Card Network Solutions.

⁴⁸ Cases M.9014 – PKN Orlen/Grupa Lotos and M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija.

⁴⁹ Cases M.9014 – PKN Orlen/Grupa Lotos and M.7603 – Statoil Fuel and Retail/Dansk Fuels.

⁵⁰ Cases M.9014 – PKN Orlen/Grupa Lotos; M.7849 – MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija; and M.7603 – Statoil Fuel and Retail/Dansk Fuels.

⁵¹ Cases M.9014 – PKN Orlen/Grupa Lotos and M.4532 – Lukoil/ConocoPhillips. Marine stations are stations located at marinas, serving yachts and sailboats.

⁵² Cases M.9014 – PKN Orlen/Grupa Lotos and M.7603 – Statoil Fuel and Retail/Dansk Fuels.

⁵³ The other distinctions are less relevant due to the specificities of the Slovenian market (e.g., the very small number of unmanned and marine stations).

⁵⁴ Cases M.10134 – EG Group/OMV Germany Business, paragraph 40 and M.9014 – PKN Orlen/Grupa Lotos, paragraph 626.

and having to lease the land from the motorway operator for the fuel station).⁵⁵ In *PKN Orlen / Grupa Lotos*, the Commission considered that on-motorway fuel stations (including those located on toll and non-toll motorways and expressways) likely constituted a distinct market segment in Poland, but as the evidence was not clear-cut, the Commission left the exact market definition open.⁵⁶ However, the Commission has in two cases ultimately decided against such segmentation in view of the particularities of those cases (such as the non-existence of tolls or insignificant price differences).⁵⁷

- (44) Regarding a possible segmentation between the retail supply of motor fuels to B2B customers and to B2C customers, the Commission defined sales with the use of fuel cards as B2B sales and sales without the use of fuel cards as B2C sales, since sales to B2B customers without the use of fuel cards are undistinguishable from sales to B2C customers.⁵⁸ Fuel cards are issued by fuel station operators, such as the Parties, and (international) fuel card providers such as DKV and UTA, who act as intermediaries between fuel station operators and fuel card holders (B2B customers).⁵⁹ In *PKN Orlen / Grupa Lotos*, the Commission concluded that a segmentation between sales to B2B customers and to B2C customers (based on the use of a fuel card, where fuel cards are merely tools used to provide a differentiated offer to B2B customers) was appropriate because of the different price setting/levels (with B2C customers always paying the local pump price, whereas B2B customers receive discounts on the local pump price or they negotiate a rebate on a spot price set at national level), and the diverse needs of both groups of customers. In particular, B2B customers have different requirements relating to the network coverage of their motor fuel suppliers, including putting more importance than B2C customers on a network having a significant number of on-motorways stations. In addition, the features of fuel cards can include additional services such as toll payments, or online tools for managing company fuel use as well as payment conditions, and B2C customers do not normally have access to fuel cards.⁶⁰

7.2.1.1.2. Notifying Party's view

- (45) The Parties' fuel stations sell a range of standard and premium fuels⁶¹ (premium fuels are motor fuels that perform the same basic function as standard fuels but have additives that are aimed at improving performance). The Notifying Party considers that the market for retail sales of motor fuels should not be subdivided by type of fuel, and specifically in relation to diesel it submits that there is significant demand- and supply-side substitutability between main grade and premium diesel products.⁶²

⁵⁵ Cases M.10134 – *EG Group/OMV Germany Business*, paragraph 38; M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 609; and M.1628 – *TotalFina/Elf*, paragraph 159.

⁵⁶ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 626.

⁵⁷ Cases M.7603 – *Statoil Fuel and Retail/Dansk Fuels*, paragraph 28; M.7849 – *MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*, paragraph 21.

⁵⁸ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 627.

⁵⁹ See footnote 6.

⁶⁰ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraphs 627 and following.

⁶¹ Form CO, paragraphs 34-39.

⁶² Form CO, paragraphs 137 and 145. In relation to premium diesel products, as regards demand-side substitutability, the Notifying Party submits that there is no plausible way to distinguish the customers of main grade and premium diesel products, because customers combine the usage of the two types of diesel fuels, for example, they use premium diesel every 3-4 fillings, or before a longer trip, and otherwise fill their vehicles with the main grade product. Also, in very cold weather conditions some customers temporarily switch from main grade to premium to ensure the easier start of the diesel engine.

However, in relation to retail sales of automotive LPG, which the Notifying Party considers is an outdated technology used by a very low number of vehicles in Slovenia, it considers that it can be left open whether such sales constitute a separate market.⁶³

- (46) Regarding a possible segmentation between on- and off-motorway stations, the Notifying Party notes that there are two types of high-speed roads in Slovenia, which are operated and maintained by a State-owned company, the Družba za avtoceste v Republiki Sloveniji ('DARS').⁶⁴ All fuel stations located on motorways and some of the fuel stations located on expressways have concessions from DARS, to which several contractual obligations are attached. The Notifying Party submits that based on the particular features of the Slovenian market, where motorways do not have physical toll booths and where sales from fuel stations on motorways are a very important segment of the overall motor fuel market, generate higher volumes of fuel sales and are exempt from price regulation based on the most recent legislative developments, it is not justified to define separate product markets for on- and off-motorway fuel stations in Slovenia.⁶⁵ The Notifying Party submits that there are a number of non-DARS stations that are physically located on motorways and thus do compete for motorway passengers.⁶⁶ Moreover, the Notifying Party considers that there is also no need for segmentation from the customer's view. For B2B customers prices can be the same within the same network at on-motorways and off-motorway stations. As regards the B2C segment, domestic users of motorways usually refuel at off-motorway stations that are on their way in order to avoid higher motorway prices. International B2C and B2B customers will, if they even need to refuel in Slovenia instead of in neighbouring countries, consider off-motorway stations that are easily visible and accessible.⁶⁷
- (47) The Notifying Party considers that a clear segmentation between B2C and B2B markets is not possible and that distinguishing between the B2B and B2C segments by treating sales with the use of fuel cards as B2B sales and sales without the use of fuel cards as B2C sales is not warranted insofar as the Slovenian market is concerned. In particular, the Notifying Party considers that there is no local pricing in Slovenia based on the monitoring of local competition, as a result of which the price levels within the B2B and B2C sub-segments are not fundamentally different. Furthermore, the Notifying Party considers that there is significant demand-side substitutability between B2C and B2B markets. However, the Notifying Party considers that the exact market definition can be left open, because the Transaction does not raise concerns on any market definition.⁶⁸
- (48) The Notifying Party further submits that manned and unmanned stations belong to the same market due to their similar characteristics and the significant pricing constraint that unmanned stations impose.⁶⁹

⁶³ Form CO, paragraphs 137 and 147-149.

⁶⁴ The two types of high-speed roads in Slovenia are motorways (*avtocesta*) and expressways (*hitra cesta*). Both are dual carriageways, with a speed limit of 130 kilometres per hour for motorways and 110 kilometres per hour for expressways. Expressways usually do not have hard shoulders separating carriageways. Form CO, paragraphs 139-142.

⁶⁵ Reply to Article 6(1)(c) Decision, paragraphs 19 – 21.

⁶⁶ Reply to Article 6(1)(c) Decision, paragraph 22.

⁶⁷ Reply to Article 6(1)(c) Decision, paragraph 23.

⁶⁸ Form CO, paragraphs 143-144.

⁶⁹ Reply to Article 6(1)(c) Decision, paragraph 60.

- (49) In conclusion, the Notifying Party considers that the relevant market should be defined as the retail sales of motor fuels without further segmentation regarding product type (potentially with the exception of LPG), the location of the station, DARS-related contractual obligations, the type of customer or the service offered.⁷⁰

7.2.1.1.3. Commission's assessment

- (50) The Commission considers that, in line with its previous decisional practice, the retail supply of motor fuels is a distinct market and, for the reasons set out in this Section, the Commission concludes that the relevant product markets to assess for the purpose of this Decision are the retail supply of motor fuels (i) to B2C customers and (ii) to B2B customers. The various possible product market segmentations that are relevant for the present case, with regard to the Slovenian market where the Parties' activities overlap, are assessed starting at recital (51).

7.2.1.1.3.1. Segmentation by fuel type

- (51) As regards a potential segmentation between diesel and gasoline, the Commission considers that there are no elements in the case at hand that would justify departing from its previous decisional practice, i.e. while diesel and gasoline are not substitutable for consumers, they are generally both sold at fuel stations and indeed all of the Parties' regular fuel stations in Slovenia offering diesel or gasoline offer both.⁷¹ Similarly, both Parties offer a range of standard and premium fuels at their stations⁷² and the Commission considers that there are no elements in this case that would justify departing from its previous decisional practice of considering the retail supply of standard and premium fuels together.
- (52) As regards a potential segmentation limited to LPG, the Commission notes that, in general, LPG is a product in decline. In Slovenia fuel stations offering only LPG are mainly operated by independent fuel retailers not belonging to a large network, or so-called 'white pumpers'.⁷³ Some fuel stations offering diesel or gasoline also offer automotive LPG, including around 18% of the Parties' fuel stations combined. But the volume of sales of LPG for those stations is marginal, representing [<5]% of the total B2C fuel volumes sold by the Parties' fuel stations (and [<5]% of the total B2C and B2B fuel volumes sold by the Parties).⁷⁴
- (53) However, given the relatively low number of the Parties' stations that also offer LPG, the very limited volumes sold by the Parties, and since only MOL is active in LPG-only stations with just one station,⁷⁵ the Commission can leave open the exact segmentation in relation to LPG and it will make its competitive assessment on the

⁷⁰ Form CO, paragraph 146; reply to Article 6(1)(c) Decision, paragraph 21-22 and 60.

⁷¹ Commission analysis based on station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

⁷² Form CO, paragraphs 34 and 39.

⁷³ Form CO, paragraphs 520-525, Annexes 11 and 66.

⁷⁴ Station-level data provided by the Parties accompanying their "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022 (B2C, all but excluding truck-only stations and stations offering neither gasoline nor diesel).

⁷⁵ MOL Group operates a site of INA Slovenia in Kozina that sells LPG only. Form CO, footnote 309. In addition, there are only approximately 9,300 cars in Slovenia that operate with LPG (LPG only or LPG combined with gasoline and diesel), representing less than 0.8% of all passenger vehicles registered in Slovenia (all figures relate to registrations on 31 December 2020), and the number of LPG vehicles is steadily decreasing (-3% and -5% in 2019 and 2020, respectively) (Form CO, paragraph 523).

basis of regular fuel stations selling diesel and gasoline, excluding LPG-only stations and LPG volumes sold at regular stations.⁷⁶

7.2.1.1.3.2. Segmentation between motorway and off-motorway stations

- (54) Although the Notifying Party argued that a segmentation between on- and off-motorway stations is not relevant due to the lack of physical or economic barriers that would discourage motorists from entering or exiting the motorway network, motorways tolls do in fact exist in Slovenia, even though there are no toll booths. The system is based on the use of electronic vignettes for passenger cars, and heavy trucks above 3.5 tonnes are recorded through a satellite and electronic payment system.⁷⁷
- (55) As outlined in recital (46), in Slovenia DARS-related contractual obligations apply to all fuel stations located on motorways and some stations located on expressways. Expressway fuel stations with DARS-related contractual obligations share similar conditions of operations as those on motorways, whereas expressway fuel stations without DARS-related contractual obligations have similar conditions of operations as those not on motorways. For example, the obligation to be open 24 hours a day, 7 days a week does not apply to stations located on expressways without DARS conditions.
- (56) For ease of reference, fuel stations on motorways and expressways with DARS-related contractual obligations will hereinafter be referred to as ‘DARS stations’, and all other stations as ‘non-DARS stations’.
- (57) As regards demand-side substitution, in addition to the obligations in relation to opening hours, the range of products and services offered also differs between DARS and non-DARS stations as DARS stations offer overall more services than non-DARS stations. For example, 100% of the Parties’ DARS stations have a café/bar and 50% have an ATM, whereas the corresponding figures for the Parties’ non-DARS stations are 58% for cafés/bars, and 34% for ATMs. All of the Parties’ DARS stations have toilets, whereas some of their non-DARS stations do not, and the Parties’ DARS stations are also much more likely to sell premium diesel, LPG and AdBlue compared to their non-DARS stations.⁷⁸
- (58) Any demand-side substitution between DARS and non-DARS stations appears to be only in one direction, because while some drivers on DARS routes consider using non-DARS stations, drivers generally do not go to a DARS station to refuel while driving on a non-DARS route. More specifically, in relation to drivers on DARS routes, a significant proportion of respondents to the market investigation replied that such drivers will most of the time consider non-DARS stations as well as DARS stations.⁷⁹ In contrast, a majority of the market player respondents to the market

⁷⁶ The Commission has also verified that if LPG volumes sold from regular stations as well as from LPG-only stations were included, the competitive assessment would remain the same (in particular it would not significantly change the market shares at a national level and the problematic catchment areas).

⁷⁷ Form CO, paragraph 385 and non-confidential minutes of call with a competitor on 24 January 2022.

⁷⁸ Station-level data provided by the Parties accompanying their “Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija” submitted by the Notifying Party on 14 November 2022 (B2C, all but excluding truck-only stations) shows that: (i) premium diesel is sold by 100% of DARS stations, but by only 53% on non-DARS stations; (ii) LPG is sold by 72% of DARS stations, but by only 14% of non-DARS stations; and (iii) AdBlue is sold by 94% of DARS stations, but by only 19% of non-DARS stations.

⁷⁹ Non-confidential replies to questions 13 and 14 of Questionnaire 2 Retail markets – Customers in Slovenia.

investigation⁸⁰ and of the consumers who responded to the Commission’s short questionnaire⁸¹ replied that drivers would not go to a DARS station to refuel while driving on a non-DARS route. This was supported by the Slovenian Consumers’ Association, who stated that “*drivers off-motorways stay off-motorways to re-fuel*” and that it “*almost never occurs in reality*” that drivers on non-DARS routes might use DARS stations, even when those DARS stations are nearby and easily accessible.⁸²

- (59) A market player pointed to “*a considerable price difference*”⁸³ between DARS and non-DARS stations and the vast majority of the consumers who responded to the Commission’s short questionnaire indicated that the price differences between DARS and non-DARS stations is their main reason for not going to a DARS station to refuel while driving on a non-DARS route.⁸⁴ Fuel prices at DARS stations are higher: when fuel prices were not regulated (the liberalisation period of 1 October 2020 to 14 March 2022, as explained in recital (29)), the price differential for both MOL and OMV Slovenija between prices at their DARS and non-DARS stations for the various types of fuels was, on average⁸⁵, between 3% and 6%.⁸⁶ Since the government’s re-introduction of the transitory price regulation (as a result of the Russian war of aggression against Ukraine), fuel prices at non-DARS stations are currently regulated and the price differences between DARS and non-DARS stations are now even greater.⁸⁷ Even so, the majority of respondents to the market investigation, who noted the price differences between DARS and non-DARS stations⁸⁸, consider that prices at non-DARS stations are not constrained by prices at DARS stations.⁸⁹
- (60) DARS stations also serve more international customers than non-DARS stations. Slovenia is seen as being “*very much a ‘transit’ country*”⁹⁰ with “*transit vehicles driving through the country [being] likely to stay on the motorways*”.⁹¹ Such “transit customers” tend to buy more premium fuels, as they are generally more interested to engine performance, considering they travel more, and they value speed and quality.⁹²
- (61) As regards supply-side substitution, the conditions governing the operation of DARS stations also differ appreciably from those governing the operation of non-DARS stations. DARS stations can only be located in designated motorway/expressway

⁸⁰ Non-confidential replies to questions 6 and 9 of Questionnaires 9 B2B Customers in Slovenia and Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁸¹ Responses from B2C customers of MOL and OMV Slovenija to a short questionnaire, question 11.

⁸² Non-confidential minutes of call with a consumers’ association on 13 September 2022.

⁸³ Non-confidential minutes of call with a retail competitor on 5 July 2022.

⁸⁴ Responses from B2C customers of MOL and OMV Slovenija to a short questionnaire, question 13.

⁸⁵ Average non-weighted daily prices across fuel stations by fuel provider and fuel type.

⁸⁶ Commission’s analysis based on Notifying Party’s reply to RFI 3, Annex Q09.

⁸⁷ Non-confidential minutes of call with a retail competitor on 13 July 2022.

⁸⁸ Non-confidential replies to question 11 of Questionnaire 1 Retail markets – Competitors in Slovenia, questions 10 and 11 of Questionnaire 2 Retail markets – Customers in Slovenia, question 6 of Questionnaire 3 Card issuers in Slovenia, questions 4 and 8 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁸⁹ Non-confidential replies to question 6 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁹⁰ Non-confidential minutes of call with a consumers’ association on 13 September 2022.

⁹¹ Non-confidential minutes of call with a retail competitor on 20 July 2022

⁹² MOL internal document (filename: Fuel country meeting Jan-Feb 2019 evaluation) and OMV Slovenija internal document (filename: Research 2018 Country Report SI).

service areas, on land which is either owned by the State or by DARS.⁹³ The sites leased by DARS following a tender are allocated on the basis of the tenderers' ability to meet certain criteria set by DARS and for long periods of time.⁹⁴ Consequently, only three players currently operate DARS stations in Slovenia, one of which is MOL Group, with a minimal presence (two petrol stations). The other two players are Petrol and the Target. As a consequence, there are differences regarding the operational costs between DARS and non-DARS stations, and market participants indicated that costs to operate DARS stations are in general higher than those applicable to non-DARS stations.⁹⁵

- (62) The Parties' sales data also points to differences between DARS and non-DARS stations. For example, the average volume of fuel sold per station (for both B2C and B2B customers, as defined in recital (64)), is higher for DARS stations, with diesel accounting for a higher percentage of B2C sales at DARS stations ([>50]%) compared to non-DARS stations ([>50]%).⁹⁶
- (63) Therefore, the Commission considers that in Slovenia the appropriate distinction is between DARS and non-DARS stations (rather than distinguishing between fuel stations on motorways and off motorways) and it concludes, for the reasons outlined above, that for the purpose of this case, it is appropriate to examine the competitive impact of the Transaction separately for DARS and for non-DARS stations.⁹⁷

7.2.1.1.3.3. Segmentation between B2B and B2C customers

- (64) The Commission considers that it is appropriate to sub-segment the market for retail supply of motor fuels in Slovenia between, on the one hand, sales to businesses paying with a fuel card on the basis of a specific agreement concluded with the fuel supplier (B2B – hereafter, all references to 'B2B' are to business-to-business

⁹³ Form CO, paragraph 141.

⁹⁴ Form CO, footnote 235: "[...] *DARS-related locations are tendered by DARS under a public procurement procedure for a concession of ca. 30 years, even though, due to location specific reasons (e.g., ownership of plot), the period may be slightly different. To the best knowledge of the Notifying Party, in the last 5 years, DARS did not issue any tender*".

⁹⁵ Non-confidential replies to questions 13 and 14 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁹⁶ Station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. B2C, all regular stations (i.e. excluding trucks-only stations).

⁹⁷ Regarding DARS stations, the Commission notes that MOL has only very limited presence in this segment, i.e., two stations, and very limited volumes whereas Petrol is, by far, the player with the highest presence on this segment with 38 stations and OMV follows with 16 stations only. Moreover, as explained by the Notifying Party, the Commission understands that the new entity would have fuel stations positioned consecutively to each other in the same direction of travel (which is relevant for DARS stations (but not for non-DARS stations) as one driver cannot cross a DARS highway to fuel at a station located on the same road but on the opposite side) only in one case, in connection with the Lormanje (MOL) and Dobrenje (OMV Slovenija) highway stations, where the overlap only exists in one particular direction. In particular, the Lormanje station is on the A5 highway from Hungary to Maribor. In Maribor, this highway connects with A1 highway onwards to Italy and Austria. In the direction from Hungary (A5) to Austria (A1 - North), the next station is OMV Dobrenje, however in the direction from Hungary to Italy (A1 - South-West), the next station is a Petrol station. In its journey from Hungary to Austria, a driver will encounter one MOL fuel station located on the motorway A5 ('Lormanje') and, when changing motorway to reach Austria, will thereafter encounter an OMV Slovenija fuel station on the motorway A1 ('Dobrenje Vzhod'). This is the only circumstance in which the Parties have fuel stations positioned consecutively to each other in the same direction of travel. Given the existence of only one limited overlap and MOL's very limited presence, this segment will not be assessed further in this Decision.

customers who use a fuel card)⁹⁸, and on the other hand all the other customers that do not pay with a fuel card (B2C).

- (65) The Commission observes that there are appreciable differences between the sales to B2B and to B2C customers. First, the price setting and thus the price level on the two possible sub-segments are different. On the one hand, B2C customers always pay the local pump price (with the exception of a minority of MOL's customers who receive a discount on the pump price based on a B2C loyalty card).⁹⁹ On the other hand, B2B customers always receive discounts on the local pump price.¹⁰⁰ Contrary to the Notifying Party's argument that a distinction is not warranted because price levels within the B2B and B2C sub-segments are not fundamentally different in Slovenia,¹⁰¹ the market investigation showed that there is a price difference between B2C and B2B customers in Slovenia.¹⁰² In particular, around one-third of the respondents to the Phase II market investigation consider that they benefit from a discount of more than 3% as compared to totem prices and 26% of them consider that they get a discount of between 1% and 3%.¹⁰³ This is consistent with the data provided by the Notifying Party according to which, on average, MOL granted to B2B customers a discount of EUR [...] cent in 2021, representing [<5]% of the totem price,¹⁰⁴ and OMV Slovenija granted a discount of up to EUR [...] cent in 2020-2021.¹⁰⁵
- (66) In addition, the market investigation confirmed that B2B customers value operators with a significant network coverage and that they would not consider competitors with limited networks (such as white pumpers) as an alternative, whereas for B2C customers the network of the fuel suppliers is not as relevant since their choice is fundamentally local, i.e. it depends on the stations available in the area where they need to refuel at a specific moment.¹⁰⁶
- (67) From a supply-side perspective, fuel retailers have a specific offer dedicated to B2B customers with specific services (such as central invoicing and payment alerts) and have a specific salesforce to find new clients and support them with their operations. In addition, while most stations are accessible to both B2C and B2B customers, trucks-only stations are stations reserved for B2B customers (truck drivers who have a fuel card).
- (68) Therefore, the Commission concludes that for the purpose of this case it is appropriate to examine the competitive impact of the Transaction on the B2C retail market, separately from the B2B retail market.

7.2.1.1.3.4. Segmentation between regular stations and trucks-only stations

- (69) The Commission acknowledges that retail sales of diesel to B2B customers, even for trucks and buses in Slovenia, are also made from regular fuel stations. However, some companies do not operate trucks-only stations (e.g. MOL Group does not

⁹⁸ Some fuel cards function only with the issuer (e.g., the Parties), such as for instance the OMV Station Card Plus and the MOL GOLD Slovenia Fleet card (Form CO, paragraphs 397 - 420).

⁹⁹ Form CO, paragraph 143.

¹⁰⁰ Form CO, paragraph 143.

¹⁰¹ Form CO, paragraph 143.

¹⁰² Non-confidential replies to question 8 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

¹⁰³ Non-confidential replies to question 4 of Questionnaire 9 B2B Customers in Slovenia.

¹⁰⁴ Commission assessment based on Notifying Party's reply to RFI 1, Annex 15.1.

¹⁰⁵ Form CO, paragraph 427.

¹⁰⁶ Non-confidential replies to question 25 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

operate any trucks-only stations in Slovenia¹⁰⁷) while other companies are active almost exclusively in the truck segment (Shell operates a network of nine stations in Slovenia, eight of which are trucks-only stations,¹⁰⁸ and Logo is also active in this segment with three trucks-only stations).

- (70) Vehicles other than trucks cannot refuel at trucks-only stations, and trucks refuelling at these stations usually do so on the basis of a card scheme. A majority of customers indicated in response to the market investigation that truck drivers only consider trucks-only stations, with a number of them explaining that they will consider “*only to a limited extent*” all nearby stations.¹⁰⁹
- (71) In any case, the Commission considers that it is not necessary to reach a definitive conclusion and will leave open whether trucks-only stations belong to the same market as regular stations as the Transaction does not raise issues whether excluding or including truck-only stations. The Commission will not conduct any further analysis on a market for only trucks-only stations as MOL does not operate any such stations in Slovenia, and it will conduct its analysis of the impact of the Transaction on the retail supply of motor fuels to B2B customers both including and excluding trucks-only stations.

7.2.1.1.3.5. Segmentation between manned and unmanned stations

- (72) Most fuel stations in Slovenia are manned. The Parties’ activities do not overlap in unmanned stations: all of MOL’s stations are manned,¹¹⁰ while the Target operates 12 unmanned stations under the following brands: Diskont (6), EuroTruck (4, all trucks-only), and Avanti (2).¹¹¹ Although the replies by customers and competitors to the market investigation questionnaires were mixed as to whether manned and unmanned stations compete with each other, with some market players pointing to the irrelevance of such distinction due to the scarce number of unmanned stations¹¹², a leading market player stated that it “*considers unmanned to compete with manned stations, being part of one single market*”.¹¹³
- (73) Additionally, most respondents said there is not a significant price difference between manned and unmanned stations,¹¹⁴ with one operator with both types stating that its “*prices were the same in manned and unmanned service stations*”.¹¹⁵
- (74) Therefore, the Commission will analyse the impact of the Transaction on the retail supply of motor fuels from non-DARS stations to B2C and B2B customers including unmanned stations because, given the very limited number of unmanned stations, the assessment would be very similar regardless of this potential segmentation.

¹⁰⁷ Form CO, paragraph 295.

¹⁰⁸ Form CO, paragraph 308.

¹⁰⁹ Non-confidential replies to question 15 of Questionnaire 2 Retail markets – Customers in Slovenia.

¹¹⁰ Form CO, paragraph 295.

¹¹¹ Form CO, paragraph 297.

¹¹² Non-confidential replies to question 15 of Questionnaire 1 Retail markets – Competitors in Slovenia, question 16 of Questionnaire 2 Retail markets – Customers in Slovenia, and question 9 of Questionnaire 3 Card issuers in Slovenia.

¹¹³ Non-confidential minutes of call with a competitor on 8 July 2022.

¹¹⁴ Non-confidential replies to question 10 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

¹¹⁵ Non-confidential minutes of call with a competitor on 5 July 2022.

7.2.1.1.3.6. Segmentation between marine and non-marine stations

- (75) The Target operates two marine stations in Slovenia, whereas MOL operates none.¹¹⁶ Those Target stations are not accessible by road to the general public.
- (76) The Notifying Party submits that the competitive constraint those two stations might exert on regular stations, if any, is very limited, and that the market for the supply of fuel for boats, at marine stations, differs from the market for the supply of fuel for vehicles of the general public, at non-marine stations.¹¹⁷
- (77) The Commission considers that marine stations in Slovenia should be considered as being separate from regular petrol stations, and marine stations will not be considered further in the competitive assessment of regular petrol stations offering all types of fuel as it would not change the competitive assessment.

7.2.1.2. Geographic market definition

7.2.1.2.1. Commission's precedents

- (78) The Commission has in some past cases considered that the market for retail sale of motor fuel products is national in scope while also being characterised by parameters of competition at a local level.¹¹⁸
- (79) In *MOL/ENI Ceska/ENI Romania/ENI Slovensko*, the Commission considered the market to be national given that general guidelines on pricing and all advertising and promotional activity were decided at national level.¹¹⁹
- (80) In later cases, the Commission confirmed that the market for retail sale of motor fuels to B2C customers is national in scope, acknowledging however that these markets have a local element, as vehicle owners usually resort to fuel stations in their vicinity.¹²⁰ In *PKN Orlen / Grupa Lotos* and in *Statoil Fuel and Retail / Dansk Fuels*, with regard in particular to B2C customers, the Commission considered that competition conditions in Poland and Denmark, respectively, were sufficiently homogenous to conclude on a national market, taking into account the local elements of competition in the competitive assessment. In relation to the B2B customers, the market was considered national in scope since contracts are negotiated on a national basis, fuel cards are issued for all the national territory, and they do not depend on where the headquarters of the customers are located.¹²¹

7.2.1.2.2. Notifying Party's view

- (81) The Notifying Party agrees with the Commission's decisional practice to consider the market for retail supply of motor fuels to be national in scope. They specify, however, that in border regions it is also necessary to take into account fuel stations located on the other side of the border, as those exercise a significant competition constraint on the local market within Slovenia.¹²²

¹¹⁶ Form CO, footnote 304. The only other marine station in Slovenia is operated by Petrol (Notifying Party's reply to RFI 28, question 10).

¹¹⁷ Notifying Party's reply to RFI 28, question 10.

¹¹⁸ Cases M.4919 – *StatoilHydro/ConocoPhillips*, paragraphs 26-29; M.6167 – *RWA/OMV Warme*, paragraphs 12-15; and M.5005 – *Galp Energia/ExxonMobil Iberia*, paragraphs 26-28.

¹¹⁹ Case M.7311 – *MOL ENI Česká/ENI Romania/ENI Slovensko*, paragraphs 39-40.

¹²⁰ Cases M.9414 – *Kuwait Petroleum Belgium/U Car Services/VP Oil/Certain Businesses from Uhoda* and M.7849 – *MOL Hungarian Oil and Gas/ENI Hungaria/ENI Slovenija*.

¹²¹ Cases M.9014 – *PKN Orlen/Grupa Lotos*, paragraphs 646 and ff. and M.7603 – *Statoil Fuel and Retail/Dansk Fuels*, paragraphs 54 and ff.

¹²² Form CO, paragraph 214.

7.2.1.2.3. Commission's assessment

- (82) In line with its decisional practice, the Commission's market investigation in the present case confirms that the retail supply of motor fuels in Slovenia is national in scope, both for DARS and non-DARS stations, and for B2C and B2B customers.
- (83) As regards the retail supply of motor fuels to B2C customers, fuel retailers confirm, with the exception of OMV Slovenija, that they establish separate sets of prices for DARS and non-DARS stations, the former being more expensive. These prices are applied for all their products in all their stations across all of Slovenia. Moreover, and with the exception of OMV Slovenija, fuel retailers submit that they do not carry out a systematic local monitoring of competitors' prices around each of their stations.¹²³ Instead, most fuel retailers indicated that, in order to set prices at station level, they mostly focus on prices at the national level.¹²⁴ The price set by each supplier (except OMV Slovenija, which applies local pricing to a limited extent as outlined in recital (85)(c) below) is therefore homogeneous throughout the national territory.
- (84) The Commission therefore concludes that for the purpose of this Decision, the geographic scope of the market for the retail supply of motor fuels to B2C customers is national, comprising the territory of Slovenia.
- (85) However, the Commission concludes that, for the following reasons and in line with previous cases, the assessment of the overlap between the Parties (and with other competitors) at local level is also relevant and will be taken into account in the competitive assessment:
- (a) First, the overlap at local level determines how intensely the Parties compete with each other. In other words, even where the market is national and the price competition primarily takes place at a national level, for such competition to function well it is necessary that the market players also compete at a local level, to a significant extent. For example, if two companies both have a significant market share at a national level but their networks are not located in the same areas (that is, one is in the east of the country and the other is in the west), they will not compete head to head against each other, and will only be distant competitors. The Commission notes that even though the Notifying Party acknowledges that the market is national, it also underlines the local aspect of competition. For example, it points out that the "*networks of the Parties therefore complement each other*".¹²⁵ It also submitted a local assessment to estimate the possible horizontal non-coordinated effects of the Transaction.¹²⁶ Without prejudice to the Commission's concerns on the methodological choices and assumptions made by the Notifying Party (see Section 7.2.1.3.2.2 below), the assessment's local nature confirms that local interactions, and in particular the geographic proximity of rival stations, play an important role in the competitive process.
- (b) Second, as mentioned in previous cases, demand has a strong local component: once a driver decides to refuel, they will typically decide between the different stations which are within a certain radius. Several elements of the market

¹²³ Non-confidential replies to question 20 of Questionnaire 1 Retail markets – Competitors in Slovenia.

¹²⁴ *Ibid.*

¹²⁵ Form CO, paragraph 473.

¹²⁶ Form CO, paragraphs 500-519.

investigation confirm that the B2C drivers refuel in the vicinity of their homes or their work.¹²⁷

- (c) Third, prices and volumes sold at fuel stations near Slovenia's border are influenced by nearby stations on the other side of the border, including in Italy, Croatia and Austria, which shows that competitive conditions which are strictly local do have an impact on the sales of a station. There is a correlation between volumes sold by stations of different suppliers located near Slovenia's borders and the price applied by nearby stations on the other side of the border; when stations on the other side of the border increase their prices, the volumes of Slovenian close-by-stations increase, and vice versa.¹²⁸ Furthermore, the Parties' internal documents show that their pricing strategy is influenced by nearby stations on the other side of the border. For example, [reference to the Target's internal documents].¹²⁹
 - (d) Fourth, unlike the other suppliers in the market, OMV Slovenija does apply to a limited extent local pricing: [details on the Target's pricing strategy].¹³⁰
 - (e) Fifth, pricing may soon feature some local elements. [Details on MOL's possible future pricing strategy].¹³¹ This move to some local pricing is consistent with the expectation of the SCPA which, in its 2017 Fuel Market Research report, concluded that if motor fuel prices are no longer regulated then prices for a fuel station will be set "*according to the micro-location economic conditions of an individual service station, management costs, fuel purchase costs and the competitiveness of the environment*".¹³² Similarly, both Petrol and Shell consider that, when prices are no longer regulated, market players will likely start introducing some elements of local pricing or local monitoring.¹³³
- (86) When assessing the local competitive aspects of the Transaction, the Commission will analyse its local impact on the basis of 15-minute driving time isochrones as it considers this reflects the distance B2C drivers are prepared to drive to refuel. The Phase I market investigation indicated that a 15-minute driving distance plausibly reflects the average driving time that customers would be ready to drive to refuel in

¹²⁷ See for examples: responses from B2C customers of MOL and OMV Slovenija to a short questionnaire; non-confidential replies to questions 16 and 16.1 of Questionnaire 2 Retail markets – Customers in Slovenia, and non-confidential minutes of call with a consumers' association on 13 September 2022.

¹²⁸ Form CO, Annex 20, paragraphs 4-5: "*The [...] change in the price difference between Slovenian and Austrian price levels (due to the change in the excise duty tax) had a strong impact on the volumes sold on MOL Slovenia's close-to-border stations [...]. In particular, it is visible that the total volume of Euro-super 95 sold on MOL Slovenia's all stations decreased in 2021 compared to 2019, but - contrary to this trend - the two border stations showed a significant increase in volume. The increase of volumes at border stations compared to the performance of MOL Slovenia's whole network is also visible comparing the 2021 volumes with the 2020 volumes (the difference in performance is still lower than comparing with 2019, as the year 2020 was strongly impacted by COVID restrictions regarding border crossing that reduced cross-border customer volumes)*".

¹²⁹ OMV Slovenija internal document (filename: Pricing strategy_SI_2015 9dec2015.pptx).

¹³⁰ Form CO, paragraph 357.

¹³¹ MOL internal document (filename: FUEL PRICING_WI_final.docx).

¹³² Translated from the Slovenian version of the report, available on the SCPA's website (http://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/Raziskave/Porocilo_o_raziskavi_trga_pogonskih_goriv_-_nezaupna_AVK_2017_.pdf), page 26.

¹³³ Non-confidential replies to question 11 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

Slovenia.¹³⁴ Furthermore, the responses from the short questionnaire sent to B2C customers of MOL and OMV Slovenija during the Phase II market investigation show that the vast majority of respondents who expressed an opinion drive up to 15 minutes to reach a station.¹³⁵

- (87) As regards the retail supply of motor fuels to B2B customers, a non-negligible number of B2B respondents to the market investigation consider that the market is wider than national,¹³⁶ and some B2B customers told the Commission that they do and can switch to fuel retailers in neighbouring countries if prices on any given day are cheaper in such countries,¹³⁷ suggesting that competition from outside Slovenia plays a role in this market. However, the majority of B2B respondents to the market investigation who expressed an opinion considered that the geographic scope of the market is national,¹³⁸ and contracts with B2B customers are negotiated on a national basis and prices agreed are typically applicable for the entire network of the fuel suppliers.¹³⁹
- (88) The conditions of competition seem therefore to be homogeneous throughout the entire territory and so the Commission concludes for the purpose of this Decision that the geographic scope of retail supply of motor fuels to B2B customers is national, comprising the territory of Slovenia.
- (89) The Commission therefore concludes that: (i) the market for retail sale of motor fuels to B2C customers in Slovenia is national in scope, and due to the local elements of competition the local impact of the Transaction will be analysed on the basis of 15-minute driving time catchment areas; and (ii) the market for the retail sale of motor fuels to B2B customers in Slovenia is national in scope.

7.2.1.3. Competitive assessment: horizontal non-coordinated effects

7.2.1.3.1. Legal framework for the assessment of non-coordinated effects

- (90) Under Article 2(2) and (3) of the Merger Regulation,¹⁴⁰ the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the Parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.
- (91) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.¹⁴¹

¹³⁴ Non-confidential replies to questions 13 and 18 of Questionnaire 2 Retail markets – Customers in Slovenia.

¹³⁵ Responses from B2C customers of MOL and OMV Slovenija to a short questionnaire.

¹³⁶ Non-confidential replies to question 17 of Questionnaire 2 Retail markets – Customers in Slovenia.

¹³⁷ Non-confidential minutes of call with a competitor on 9 February 2022; and non-confidential replies to question 21.1 of Questionnaire 9 B2B Customers in Slovenia.

¹³⁸ Non-confidential replies to question 17 of Questionnaire 2 Retail markets – Customers in Slovenia.

¹³⁹ Form CO, paragraph 394 *et seq.*

¹⁴⁰ With regard to the application of the Merger Regulation in the EEA, see Annex XIV to the EEA Agreement.

¹⁴¹ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5), (**‘Horizontal Merger Guidelines’**).

- (92) Both Horizontal and Non-Horizontal Merger Guidelines¹⁴² distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (93) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.¹⁴³
- (94) Generally, a merger giving rise to such horizontal non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm. According to well-established case law of the Court of Justice of the European Union, very large market shares – 50 % or more – may in themselves be evidence of the existence of a dominant market position.¹⁴⁴ The overall concentration level in a market may also provide useful information about the competitive situation.
- (95) Furthermore, mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition.¹⁴⁵
- (96) In other words, a horizontal merger may significantly impede effective competition not only by creating or strengthening a dominant position but also by eliminating important competitive constraints that the merging parties exert upon each other, which will also reduce the competitive pressure on the remaining competitors.
- (97) The Horizontal Merger Guidelines lists a number of factors, which may influence whether, or not, significant non-coordinated effects are likely to result from a merger, such as large market shares of the merging firms, close competition, and the limited possibilities for customers to switch suppliers.¹⁴⁶ Furthermore, in accordance with the Horizontal Merger Guidelines, a merger with a potential competitor can also have horizontal anti-competitive effects where the potential competitor constrains the behaviour of firms active in the market.¹⁴⁷

7.2.1.3.2. Retail supply of motor fuels to B2C customers from non-DARS stations (Slovenia)

- (98) For the reasons set out in the following Sections, the Commission considers that the Transaction would result in a significant impediment to effective competition as a result of horizontal non-coordinated effects on the market for the retail supply of

¹⁴² Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6–25), (**Non-Horizontal Merger Guidelines**’).

¹⁴³ Horizontal Merger Guidelines, paragraph 24.

¹⁴⁴ Horizontal Merger Guidelines, paragraph 17; Case T-221/95 - *Endemol v Commission*, paragraph 134; and Case T-102/96 - *Gencor v Commission*, paragraph 205.

¹⁴⁵ Horizontal Merger Guidelines, paragraph 25.

¹⁴⁶ Horizontal Merger Guidelines, paragraph 26.

¹⁴⁷ Horizontal Merger Guidelines, paragraph 59.

motor fuels to B2C consumers at non-DARS stations in Slovenia. During its investigation, the Commission assessed at national level (Section 7.2.1.3.2.1): (i) the market structure at national level (from recital (99)); (ii) whether the Parties are close competitors (from recital (104)); (iii) whether the Transaction would remove an important competitive force on the market (from recital (132)); (iv) the likely reaction of competitors (from recital (161)); (v) barriers to entry and expansion (from recital (175)); and (vi) the countervailing power of B2C customers (from recital (187)). The Commission also assessed at a local level the impact of the Transaction (Section 7.2.1.3.2.2).

7.2.1.3.2.1. National assessment

A. Market shares and market structure

- (99) According to the Horizontal Merger Guidelines,¹⁴⁸ market shares constitute useful first indications of the market structure and of the competitive importance of the market players. The Horizontal Merger Guidelines explain that the larger the market share, the more likely a firm is to possess market power.¹⁴⁹
- (100) Furthermore, the larger the addition of market share (or ‘increment’) brought by the transaction, the more likely it is that a transaction will lead to a significant increase in market power. In this Decision, the post-Transaction market shares are calculated on the assumption that the post-Transaction combined market share of the Parties is the sum of their pre-Transaction market shares. In the present case, the Parties calculated market shares based on information on station-level data provided by the Parties, including (i) their own volume data at station-level, (ii) number of stations, as well as (iii) estimates for their competitors’ per station volumes and (iv) number of stations, in particular Petrol. The Commission verified the accuracy of the calculations. The Phase I and Phase II market investigation did not reveal any flaw that would disqualify the Parties’ estimates.

Table 1: Market shares for retail supply of motor fuel to B2C customer at non-DARS fuel stations on a national level in Slovenia in 2019-2021 (number of stations and volumes)

	Market shares (number of stations)			Market shares (volumes)		
	2019	2020	2021	2019	2020	2021
Petrol	58%	58%	58%	[40-50]%	[40-50]%	[40-50]%
OMV Slovenija	21%	21%	21%	[30-40]%	[30-40]%	[30-40]%
MOL	11%	11%	11%	[10-20]%	[10-20]%	[10-20]%
Combined (OMV Slovenija and MOL)	32%	32%	32%	[40-50]%	[40-50]%	[40-50]%
Maxen	4%	4%	4%	[0-5]%	[0-5]%	[0-5]%
Logo	1%	1%	1%	[0-5]%	[0-5]%	[0-5]%
Shell	<1%	<1%	<1%	<[0-5]%	<[0-5]%	<[0-5]%
Others	3%	4%	4%	[0-5]%	[0-5]%	[0-5]%

Source: Commission analysis based on national-level data provided by the Parties in RFI 1, Annex 4b-d1, with the assumption that Maxen and Logo operated respectively 21 and 7 stations throughout 2019-2021 with an average per station volume as implied from the data provided by the Parties.

¹⁴⁸ Horizontal Merger Guidelines, paragraph 14.

¹⁴⁹ Horizontal Merger Guidelines, paragraph 27.

- (101) As shown in Table 1, the combined market share in the market for the retail supply of motor fuel from non-DARS stations to B2C customers in 2021 in volume would be [40-50]%, with a significant increment of [10-20] percentage points.
- (102) In addition, the Commission has also calculated the HHI¹⁵⁰ and HHI delta or increment in order to assess the level of concentration of the relevant markets.

Table 2: HHI for retail supply of motor fuel to B2C customer at non-DARS fuel stations on a national level in Slovenia in 2019-2021 (number of stations and volumes)

	HHI based on market shares in number of stations			HHI based on market shares in volumes		
	2019	2020	2021	2019	2020	2021
Pre-Transaction	3998	3995	3972	[3,500-4,000]	[3,000-3,500]	[3,000-3,500]
Post-Transaction	4465	4453	4431	[4,000-4,500]	[4,000-4,500]	[4,000-4,500]
Increment	467	458	459	[500-1,000]	[1,000-1,500]	[500-1,000]

Source: Commission analysis based on national-level data provided by the Parties in RFI 1, Annex 4b-d1, with the assumption that Maxen and Logo operated respectively 21 and 7 stations throughout 2019-2021 with an average per station volume as implied from the data provided by the Parties.

- (103) The market for the retail supply of motor fuel from non-DARS stations to B2C customers is highly concentrated with a pre-Transaction HHI of [3,000-3,500] and a post-Transaction HHI of [4,000-4,500] (volume).¹⁵¹ The Transaction leads to a significant HHI increment ([500-1,000]).¹⁵²

B. Closeness of competition

- (104) The results of the Commission's investigation indicate that the Parties are close competitors in Slovenia, and that Petrol is the only player that competes as closely with the Parties as the Parties do between themselves. Specifically, and as explained below in more detail: the Parties' networks overlap to a very significant extent; they offer similar services; they operate under brands that are well known in the market; and the Parties' internal documents and the results of the market investigation confirm that the Parties are close competitors.

B.1 National coverage and importance of local overlaps

- (105) In terms of locations, the Parties' networks both have national coverage. According to the Notifying Party, both Parties are present in both urban and rural areas and have a strong focus on densely populated areas and on main transit roads, while Petrol covers more rural locations than the Parties.¹⁵³
- (106) The Parties argue that their network coverage is complementary as MOL has a better coverage in the north-east of Slovenia and limited coverage in the west, whereas

¹⁵⁰ The Herfindahl-Hirschman Index (HHI), a common measure of market concentration, is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The change in the HHI (known as the 'delta') is a useful proxy for the change in concentration directly brought about by the merger. Except for the special circumstances provided in the Horizontal Merger Guidelines, the Commission is unlikely to identify horizontal competition concerns in a market with (i) a post-merger HHI below 1,000, (ii) a post-merger HHI between 1,000 and 2,000 and a delta below 250 or (iii) a post-merger HHI above 2,000 and a delta below 150.

¹⁵¹ In number of stations, the higher pre-existing concentration relates mostly to Petrol's shares.

¹⁵² Calculated in taking into account the exact market share of each provider individually, included those mentioned all together in the "other" category.

¹⁵³ Notifying Party's submission dated 12 April 2022, paragraphs 11 and 13.

OMV Slovenija has good coverage in the west and fewer stations in the east of the country.¹⁵⁴

- (107) Even though the Parties do not have the exact same coverage, the Commission notes that MOL and OMV Slovenija compete locally to a very significant extent. In particular, they overlap in 106 (72%) of the 147 catchment areas where either MOL or OMV Slovenija are reference stations.¹⁵⁵ The high percentage of the local overlaps shows that the Parties compete closely at local level.
- (108) When compared to the level of competition with other market players, only Petrol competes locally as closely. Thanks to its extremely broad network in Slovenia, Petrol competes in practically all catchment areas.¹⁵⁶ In that respect, the Commission notes that Petrol has stations all over the territory, located in cities, suburbs and rural areas.¹⁵⁷
- (109) However, the importance of the local overlaps between the Parties' stations is clear when looking at the local overlaps between the Parties and smaller players. For example, at local level MOL and OMV Slovenija's stations compete less intensively with Maxen (respectively in [...] with MOL and [...] with OMV of their catchment areas and [...] with the merged entity post-Transaction).¹⁵⁸ This is no surprise as Maxen has significantly fewer stations than each of the Parties. The Parties compete even less with Logo with only [...] and [...] of MOL and OMV Slovenija's stations located in the same catchment areas as Logo, respectively.¹⁵⁹
- (110) Moreover, in terms of localisation, MOL and OMV Slovenija have similar footprints, quite similar with Petrol, that differentiate their networks from the other players. For example, the majority of their stations are located near a supermarket ([...] of OMV Slovenija's stations and [...] of MOL's) which is slightly more than Petrol). The difference is striking, however, when compared with Logo (14% of its stations),¹⁶⁰ and Maxen, which are located in more rural areas and according to MOL's internal documents, [details on MOL's view as regards Maxen in Slovenia].¹⁶¹
- (111) In addition, the Parties are also close in terms of B2C volume output per non-DARS station in Slovenia ([2-3] million litres for MOL and [2-3] million litres for OMV Slovenija)¹⁶² and in that respect, the Parties are somewhat closer to one another than to Petrol (with an average of [1-2] million litres). However, this slight difference to Petrol can be explained by the very high number of stations owned by Petrol.¹⁶³

¹⁵⁴ Reply to Article 6(1)(c) Decision, paragraph 30.

¹⁵⁵ ¹⁵⁴ As explained below, the Commission's analysis of local overlaps on the B2C segment of motor fuel sales of non-DARS consisted in defining 'catchment areas' around each individual retail station of the Parties' networks, of a radius of 15-minute driving-time. The station around which the catchment area is defined is called "reference station". In addition, overlap refers here to the presence of a brand's station in the catchment area of a reference station.

¹⁵⁶ Station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ MOL internal document (filename: Market intelligence SLO - 2021 Q4.xlsx).

¹⁶² Station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

¹⁶³ *Ibid.* Parties' estimates.

B.2 Services

- (112) The Commission considers that the Parties are close competitors in terms of network characteristics, especially as compared to independent fuel stations.
- (113) First, the Commission notes that the Parties have a very similar average number of car islands¹⁶⁴ per station [...] for MOL and [...] for OMV Slovenija), which is slightly less than Petrol (4 car islands).¹⁶⁵
- (114) Second, as can be seen from Figure 1,¹⁶⁶ contrary to various smaller competitors, they both operate mainly full-service sites offering all fuel types, and additional services such as convenience stores, cafés, and parcel acceptance at their non-DARS fuel stations. Petrol is the only player to offer similar services.

Figure 1: OMV Slovenija's view of the competitive landscape in Slovenia

Overview and competitive landscape (1/2) – Fuel retail market

Retail fuel market is dominated by four large players

Key highlights

- ▶ The overall size of the fuel stations network has shown moderate expansion over the last years
- ▶ A relatively high average fuel throughput per fuel station signal that Slovenia still remains underserved with filling stations relative to the size of its retail fuel market. Over the short-term a moderate expansion of the number of fuel stations is likely as recently introduced price liberalisation has the potential to boost profitability

Company	Overview / short description	Market share by volume ¹ (2020A)	# of FS (2020A or latest available)	Avg. throughput (L/mn, 2019A) ²	FS formats		Other services				
					Premium stations (retail convenience offering included)	Unmanned stations	Loyalty program	E-charging	Parcel acceptance partnerships	Mobile payment solutions	E-commerce
	▶ Diversified and integrated national incumbent, listed on Ljubljana Stock Exchange					✗				✓	✓
	▶ Premium fuel sales business present on the Slovenian market since 1992									✓	✗
	▶ In Slovenia present since 1996					✗				✗	✗
	▶ Entered Slovenia in 1994							✗	✗	✗	✗
	▶ A network of unmanned stations, part of Mercator Group				✗			✗	✗	✗	✗

Legend: ✓ Feature present / established ✗ Non present or marginal

20 | Project Pegasus, April 2021

confidential
Helga Lenkoviczky
Baker & McKenzie



Source: OMV internal document (filename: Project Pegasus – Confidential Information Memorandum.pdf).

- (115) Based on the granular data provided by the Parties, the Commission notes that the Parties' stations have similar equipment/services and that Petrol's stations also offer similar equipment /services, even though there are some slight differences.¹⁶⁷ Overall, the Parties have well-equipped stations. For example, more than 90% of the Parties' stations are equipped with toilets while 61% of Petrol's stations provide such services. Further, more than half of the Parties' stations have a bar whereas 22% of Petrol's stations offer that service. As for the presence of ATMs, 46% OMV Slovenija's stations have this service as against 12% of MOL's and 40% of Petrol's.

¹⁶⁴ As provided by the Notifying Party in the "Note on the methodology followed for the "local retail market" analysis provided in the draft notification of M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 3 January 2020: car islands refer to the number of pump islands for cars.

¹⁶⁵ *Ibid.* Parties' estimates.

¹⁶⁶ See also Form CO, Annex 13.1.

¹⁶⁷ Station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but excluding truck-only stations. Each figure represents the percentage of stations of a certain group (including all brands) that offer a service.

Finally, the Parties do not have stations with restaurants, while 13% of Petrol's stations do.

- (116) The same cannot be said for smaller competitors. For instance, the fourth largest player in the market, Maxen, does not offer any services as it operates unmanned stations only (i.e., stations without services) and it has more rural stations.¹⁶⁸ Regarding Logo, even though its stations offer similar services to the Parties (for example, all its stations are equipped with toilets and bars and 43% have ATMs), it cannot be considered a close competitor for many other reasons, in particular because of its very limited number of stations. The lack of closeness of competition between the Parties and Logo is further evidenced by OMV Slovenija's information memorandum (see Figure 1 on competitive landscape), where OMV Slovenija did not even consider Logo among the largest players in Slovenia.

B.3 Brand awareness

- (117) The Parties' brands, together with Petrol's, are the most recognisable fuel brands in Slovenia. The level of brand awareness for both Parties' is very high. As shown in Table 3, based on the customer surveys prepared for MOL, it appears that Petrol is the leading brand with OMV Slovenija and MOL being ranked second and third, respectively.

Table 3: Results of MOL Slovenija's brand awareness surveys¹⁶⁹

Brand	2022 ¹⁷⁰	2021 ¹⁷¹	2020	2019	2018
Petrol	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%
OMV Slovenija	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%
MOL	[70-80]%	[70-80]%	[60-70]%	[60-70]%	[50-60]%
Logo	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Maxen	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Shell	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Source: Notifying Party's reply to RFI 21, question 9.

- (118) While the Commission acknowledges that brand awareness of OMV Slovenija is higher than for MOL,¹⁷² they remain quite close to each other and, more importantly, well above the smaller players. As shown in Table 3, there is a significant gap between MOL (the third-ranked company) and the fourth-ranked company. For example, in 2022, there is a [10-20]-percentage point difference between the brand awareness score of OMV Slovenija and MOL, while the difference between MOL and the fourth-ranked brand (Shell) amounts to [50-60] percentage points.
- (119) Furthermore, Table 3 shows that MOL's brand awareness has been increasing in recent years.¹⁷³ This is also confirmed by MOL's internal documents: [details on MOL's assessment of its brand awareness in Slovenia].¹⁷⁴ As a result of a consistent increase in MOL's brand awareness in recent years, the gap between both brands' awareness has been closing.

¹⁶⁸ Non-confidential minutes of call with a competitor on 9 February 2022: "[our] rural filling stations are mostly isolated with not much competitors in the surrounding 30 km."

¹⁶⁹ The results are the ones listed under "spontaneous awareness", i.e., the consumers are requested to indicate, without any other guidance, the fuel retail brands they are aware of.

¹⁷⁰ Wave 1.

¹⁷¹ Wave 1.

¹⁷² Article 6(1)(c) Decision, paragraph 33.

¹⁷³ This was also confirmed by MOL internal documents (e.g., filename: Business review template_BP2022.pptx).

¹⁷⁴ MOL internal document (filename: Business review template_BP2022.pptx), slide 6.

B.4 Internal documents of the Parties on closeness of competition

- (120) The Parties' internal documents confirm that the Parties consider that they are close competitors and compete head-to-head one with another.
- (121) First, it stems from the internal documents that the Parties consider each other as strong competitors. For example, MOL describes OMV Slovenija as "[details on MOL's assessment of the Target's market position in Slovenia]".¹⁷⁵ [Details on MOL's assessment of the Target's market position in Slovenia].¹⁷⁶ [Details on MOL's assessment of the Target's market position in Slovenia].¹⁷⁷
- (122) Similarly, in its internal documents, OMV Slovenija notes that [confidential details on the Target's assessment of MOL's and Petrol's market position in Slovenia].¹⁷⁸
- (123) Second, as explained in detail in recital (330), there are multiple documents showing that the Parties monitor each other very closely, evidencing that they consider themselves as competing head-to-head with each other. The Parties' internal documents indicate that [details on the Parties' pricing monitoring].^{179,180} [details on the Parties' pricing monitoring].
- (124) The monitoring of OMV Slovenija and Petrol's prices is an integral part of MOL's price-setting process. [details on MOL's pricing policy in Slovenia].¹⁸¹ Figure 2 shows one example of MOL's daily reporting.

Figure 2- -: Example of daily price monitoring by MOL

[details on MOL's pricing strategy in Slovenia]

Source: Form CO, Annex 30.

- (125) OMV Slovenija also monitors MOL's and Petrol's prices. [details on the Target's pricing policy in Slovenia].¹⁸² [Details on the Target's pricing policy in Slovenia]. Figure 3 shows an example of OMV Slovenija's internal monitoring.

Figure 3: Example of price monitoring by OMV

[Details on the Target's pricing policy in Slovenia]

Source: Form CO, Annex 38.

- (126) Third, MOL's internal documents confirm the view that none of the smaller players (not even MOL or OMV Slovenija) represent a significant competitive constraint. For example, MOL explains in one presentation prepared in the context of the transaction that "[details on MOL's assessment regarding the closeness of

¹⁷⁵ MOL internal document (filename: Business review MOL Slovenia 2021_October update.pptx), slide 3.

¹⁷⁶ MOL internal document (filename: Slovenia Business Review 2019_v2.pdf), slide 6.

¹⁷⁷ MOL internal document (filename: 2020_Kantar_MOL_Equity_Tracking_w5_Slovenia.pdf), slide 25.

¹⁷⁸ OMV internal document (filename: Cooperation with agency Mayer -Mccann, annual brief, 2021_01_v1.pdf), slide 3.

¹⁷⁹ MOL internal document (filename: RE: MOL SLO (excise duty change) market reaction/ our strategy); MOL internal document (filename: RE: HEAD OF RETAIL CALL Agenda - Slovenia); MOL internal document (filename: SLO FUEL Pricing Process Action List 2021 Q1_4_5_2021.pptx); MOL internal document (filename: FUEL Pricing Process Action List 2021 Q1_19_25_upd.pptx).

¹⁸⁰ OMV internal document (filename: analiza cen 11.1); OMV internal document (file name: RE: analiza cen 9.11).

¹⁸¹ MOL internal document (filename: SLO FUEL Pricing Process Action List 2021 Q1_4_5_2021.pptx); MOL internal document (filename: OPEX_optimization_HU_final.pptx).

¹⁸² Form CO, paragraph 352. The Notifying Party explains that OMV Slovenija does also some local monitoring but using the goriva.si website (Form CO, paragraph 379).

competition in Slovenia].”¹⁸³ [details on MOL's assessment regarding the closeness of competition in Slovenia].¹⁸⁴ While the Commission disagrees that the Parties do not exert a competitive constraint in the market, it agrees with the Notifying Party that the smaller players are too small to exert competitive pressure on the three main players, i.e., Petrol, OMV Slovenija and MOL.

- (127) As a result, the internal documents of MOL confirm that the Parties together with Petrol are close competitors and that the other competitors do not exert a significant competitive constraint on the Parties.

B.5 Results of the market investigation

- (128) The Phase I and Phase II market investigations confirmed that the Parties are close competitors.

- (129) In Phase I, the Commission asked the competitors to identify the relevant parameters of competition (e.g., price, credit terms, network coverage or having a sufficient number of stations on the main non-DARS roads). The Commission then asked competitors to rank its competitors on the basis of all the parameters combined. Respondents to the market investigation identified OMV Slovenija and MOL as close competitors. OMV Slovenija is either as close a competitor to MOL as Petrol, or the second closest competitor after Petrol. Similarly, they also perceive MOL to be the second closest to OMV Slovenija – very closely after Petrol.¹⁸⁵

- (130) In Phase II, the Commission asked competitors in the market investigation to rank competitors taking account of the following criteria: prices, services, network coverage, and loyalty programme. Respondents confirmed that MOL and OMV Slovenija, together with Petrol are close competitors, while smaller competitors such as Logo and Maxen scored significantly lower.¹⁸⁶

- (131) The results of the Phase I and II market investigations thus confirm that the Parties are close competitors and that the smaller network operators and white pumpers are not close competitors of the Parties.

C. Removal of an important competitive force

- (132) The Horizontal Merger Guidelines state that “*some firms have more of an influence on the competitive process than their market shares would suggest. A merger involving such a firm may change the competitive dynamics in a significant anticompetitive way, in particular in a market that is already concentrated.*”¹⁸⁷

- (133) As a preliminary remark, the Commission notes that when assessing the removal of an important competitive force, the Commission can, depending on the specificities of each case, assess whether it is the target firm or the buyer which exerts the important competitive force. The Horizontal Merger Guidelines do not make any distinction and in its decisional practice, the Commission has already assessed not

¹⁸³ Presentation “Acquisition of OMV Slovenija by MOL” for the State of Play meeting, dated 7 June 2022, p. 4.

¹⁸⁴ MOL internal document (filename: Project_Pegasus_SoP meeting 07062022_v2.pptx), slide 2.

¹⁸⁵ Non-confidential replies to question 35 of Questionnaire 1 Retail Markets – Competitors in Slovenia; and non-confidential replies to question 31 of Questionnaire 2 Retail markets – Customers in Slovenia.

¹⁸⁶ Non-confidential reply to question 13 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

¹⁸⁷ Horizontal Merger Guidelines, paragraph 37.

only whether the target, but also whether the buyer represented an important competitive force before the transaction.¹⁸⁸

- (134) In the present case, it is particularly relevant to assess whether MOL, as the smallest of the three main players and the only one to have expanded its network to a significant extent in recent years, represents an important competitive force that will be removed as a result of the Transaction.
- (135) In its Article 6(1)(c) Decision, the Commission considered that the Transaction would remove the important competitive constraint on the market for the retail fuel supply of non-DARS to B2C customers that the Parties previously exerted upon each other and also on the remaining competitors, in particular Petrol. According to its preliminary findings, the Commission found that MOL was exerting a significant competitive constraint on the market, both on OMV Slovenija and Petrol, as it seemed to be acting as a “*price challenger*”, notably thanks to its loyalty programme. In particular, the Commission noted that MOL has launched a loyalty programme in June 2021 (6 months after the price liberalisation) that is the only one to offer discounts on fuel products¹⁸⁹ and that the loyalty programme has been attracting a significant number of customers.¹⁹⁰
- (136) The Notifying Party itself described in the Form CO its programme as “*aggressive*” allowing MOL to offer “*lowest retail fuel prices in the country among all major branded networks*” (i.e., Petrol and OMV Slovenija).¹⁹¹
- (137) The Phase II market investigation did not confirm the Commission’s preliminary findings in its Article 6(1)(c) Decision that MOL would exert a significant price constraint on the market, both on OMV Slovenija and Petrol, and might be qualified as “*maverick*” in terms of prices, for the reasons set out in the following recitals.
- (138) First, a detailed assessment of the Parties and Petrol’s prices over the liberalisation period shows that price differences, even when taking into account the loyalty discounts, are *de minimis* (significantly less than [...] cent per litre).
- (139) When looking at totem prices, the average daily prices are almost identical, with on average marginal differences as can be seen from Table 4.

Table 4: Average price difference for diesel and gasoline main grade during the liberalisation period

Fuel type	Average absolute value of daily average price difference [EUR/l]		
	<i>between MOL and OMV Slovenija</i>	<i>between OMV Slovenija and Petrol</i>	<i>between MOL and Petrol</i>
diesel maingrade	0,004	0,004	0,003
gasoline maingrade 95	0,004	0,004	0,004

Source: Commission assessment based on Goriva data extracted from goriva.si and provided in reply to RFI 17 submitted by the Notifying Party on 3 August 2022. Non-DARS, non-highway, B2C, all but trucks-only stations.

¹⁸⁸ See, for example, Cases M.6992 – *Hutchison 3G UK/Telefónica Ireland* and M.7612 – *Hutchison 3G UK/Telefónica UK*.

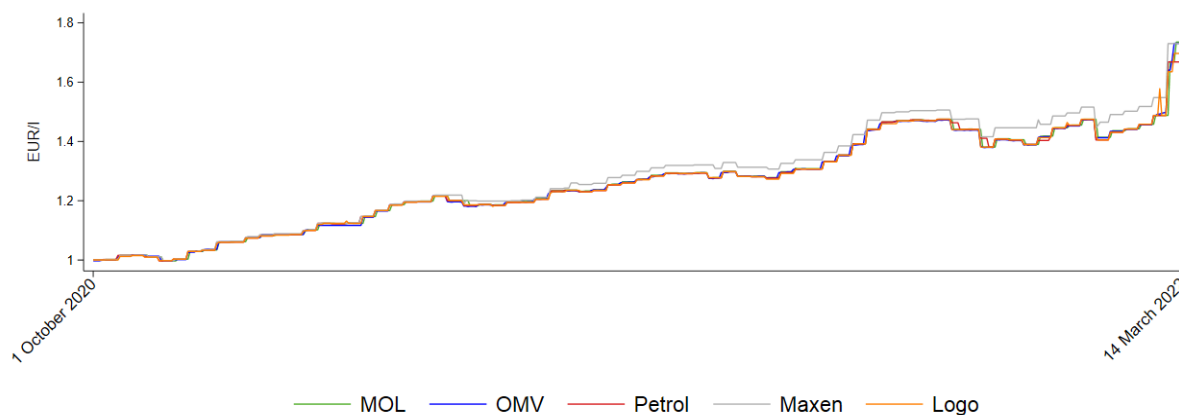
¹⁸⁹ Form CO, Annex 63.1.1. Other competitors such as OMV Slovenija and Petrol have loyalty programmes but they do not offer discounts on fuel products, only on non-fuel products.

¹⁹⁰ Notifying Party’s reply to RFI 15, paragraph 53.

¹⁹¹ Form CO, paragraph 376.

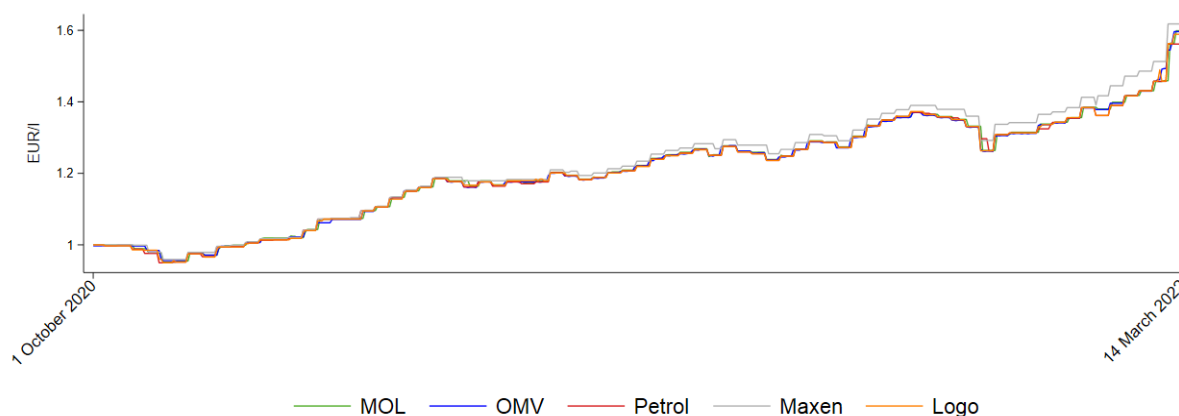
- (140) The limited price difference is also evidenced by the graphs in Figures 4 and 5 which show that even during the liberalisation period prices of the three main players were almost identical:

Figure 4: Evolution of totem price (EUR/l) of diesel main grade throughout liberalisation period, by fuel provider



Source: Commission assessment based on Goriva data extracted from goriva.si and provided in reply to RFI 17 submitted by the Notifying Party on 3 August 2022. Non-DARS, B2C, all but trucks-only stations and excluding marine stations.

Figure 5: Evolution of totem price (EUR/l) of gasoline main grade throughout liberalisation period, by fuel provider



Source: Commission assessment based on Goriva data extracted from goriva.si and provided in reply to RFI 17 submitted by the Notifying Party on 3 August 2022. Non-DARS, B2C, all but trucks-only stations and marine stations excluded.

- (141) When looking at final prices, even after applying the discounts, the Commission notes that the prices are still almost identical, even though MOL often prices slightly below other players. The average price difference post loyalty discount is still less than EUR 1 cent per litre. This can be explained by several factors:
- (a) First of all, the loyalty customers represent limited volumes, (approximately [20-30]% of the B2C volumes of MOL) and less than [10-20]% of the monthly purchased volumes benefit from loyalty discount.¹⁹²
 - (b) Second, the conditions to obtain the loyalty discount are rather stringent¹⁹³, depending on the tier of the customers. The Tier 1 customers (the first level of

¹⁹² Notifying Party's reply to RFI 8, question 6, table 10.

loyalty)¹⁹⁴ that represent the majority of the active loyalty customers¹⁹⁵ only get a EUR 2 cent per litre discount on premium products and no discount for main grades¹⁹⁶. The Tier 2 customers that represent approximately [40-50]%¹⁹⁷ of the loyalty customers get a EUR 4 cent discount per litre on premium products but only EUR 1 cent on main grade products. Premium products represent less than [<10]% of the total volume purchased by loyalty costumers.¹⁹⁸

- (c) Third, competitors and market participants do not seem to consider MOL's loyalty programme as particularly strong. None of MOL's competitors that responded to the Phase II market investigation considered MOL's loyalty programme as the most competitive, despite it being the only one offering discounts on fuel products.¹⁹⁹ For example, one competitor considers that *"MOL's loyalty program is rather small, as it is limited to premium products. [I] did not observe any drop of quantities due to the loyalty program."*²⁰⁰ One other competitor is not even aware that MOL's loyalty program includes discounts: *"it is not aware of the fact that MOL's loyalty programme included fuel discounts."*²⁰¹
- (142) More generally, it does not stem from the market investigation that MOL is a maverick in terms of prices. None of the competitors who responded to the Phase II market investigation consider MOL the most aggressive during the liberalisation period.²⁰² The majority of the competitors that responded indicated that MOL, OMV Slovenija, Petrol and the remaining competitors all price similarly.²⁰³
- (143) This was also confirmed by various stakeholders. According to the Slovenian Consumers' Association, *"MOL does not present any differences in terms of prices compared to Petrol or OMV"*.²⁰⁴ Similarly, the Chamber of Commerce underlined that: *"prices between different retailers have always been very close, even during liberalization. There is no aggressive price competition."*²⁰⁵
- (144) Lastly, MOL's internal documents confirm that MOL is not considered as particularly aggressive on pricing. For example, in one internal document, MOL explains that it *"[details on MOL's assessment of customers' perception of its pricing policy in Slovenia]"*.²⁰⁶
- (145) Overall, based on the feedback of the market investigation, MOL is not seen as a maverick in terms of prices.

¹⁹³ Notifying Party's reply to RFI 17, question 3. Conditions applying after September 2021. Before the conditions were even more stringent with no discount at all for Tier 1 customers.

¹⁹⁴ Tier 1 customers are those who have up to 1,000 points – see paragraph 87 of the Notifying Party's reply to RFI 17.

¹⁹⁵ Notifying Party's reply to RFI 17, question 4.

¹⁹⁶ Notifying Party's reply to RFI 17, paragraph 28.

¹⁹⁷ Notifying Party's reply to RFI 17, question 4.

¹⁹⁸ Notifying Party's reply to RFI 17, question 4.

¹⁹⁹ Non-confidential reply to question 17 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

²⁰⁰ Non-confidential minutes of call with a competitor on 8 July 2022.

²⁰¹ Non-confidential minutes of call with a competitor on 20 July 2022.

²⁰² Non-confidential reply to question 17 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

²⁰³ Non-confidential reply to question 14 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

²⁰⁴ Non-confidential minutes of call with a consumers' association on 13 September 2022.

²⁰⁵ Non-confidential minutes of call with a chamber of commerce and industry on 3 October 2022.

²⁰⁶ Form CO, Annex 9.27.5.1; Notifying Party's reply to RFI 1, Annex Q5.d.2.5.1: *"[confidential details on MOL's assessment of customers' perception of its products in Slovenia]"*.

- (146) As a result, in view of the results of the Phase II market investigation and of the internal documents of the Parties, the Commission considers that MOL a maverick in terms of prices.
- (147) Nevertheless, the Commission considers that even though the Transaction will not remove a maverick in terms of prices from the market, it removes an important competitive force on the market.
- (148) In that respect paragraph 37 of the Horizontal Merger Guidelines only gives an example of a firm that is a recent entrant on the market and is expected to exert significant competitive pressure in the future. However, this is just one situation where a merger may lead to significant non-coordinated effects by removing an important competitive force. A firm constitutes an important competitive force where it contributes, substantially and consistently, to the competitive process on the market, based on parameters such as price, quality, choice, and innovation.
- (149) In the present case, the Commission considers the Transaction will remove an important competitive constraint in the Slovenian B2C retail fuel market for the reasons set out in the following recitals.
- (150) First, MOL has been very active in offering new products and services to customers.
- (151) For example, shortly after the price liberalisation, MOL rolled out premium diesel and it did it much faster than Petrol and OMV Slovenija. Table 5 summarises the number of MOL, OMV Slovenija and Petrol fuel stations equipped to sell premium products.

Table 5: Rolling out of premium diesel at fuel stations

	2019		2020		2021	
	No. stations	% of network	No. stations	% of network	No. stations	% of network
MOL	0	0%	21	41%	34	67%
OMV	0	0%	38	39%	38	39%
Petrol	0	0%	0	0%	23	8%

Source: Form CO, Annex 27, re-calculated by the Commission.

- (152) While it is true that premium fuels represent a limited part of the volumes sold in Slovenia (less than [<10] % of MOL's volumes and [<10] % for OMV Slovenija in 2021²⁰⁷), the number of equipped stations and volumes were expected to continue to increase.²⁰⁸ In addition, premium fuels are high margin products: when looking at MOL's data, it is apparent that its margin is around [...] % for premium diesel and [...] % for premium gasoline, whereas the margin is only [...] % and [...] % for corresponding main grade products.²⁰⁹ As a result, the margins for premium products are almost double the margins for main grade product and hence they represent a non-negligible contribution to the retailers' margins.
- (153) Overall, the rolling out and development of premium sales represented a significant part of MOL's business efforts, as explained in its internal documents. It stems from

²⁰⁷ Notifying Party's reply to RFI 5, question 12.

²⁰⁸ See for example: Information Memorandum prepared by UniCredit (April 2021) in the context of the sale of OMV Slovenija (Annex 9.17.1 of the Form CO): "[details on the Target's sales policy and strategy regarding premium fuels in Slovenia]".

²⁰⁹ Commission's assessment based on data on prices, volumes and margins provided in response to question 3 of reply to RFI 14. The statistics refer to average margins weighted by volumes during the liberalisation period (1 October 2020 – 13 March 2022) and are expressed as % of price.

the internal documents of MOL that the development of premium fuel was a key part of its business plan. In 2018, MOL's strategy for 2019 was notably to "*increase the awareness and image of premium fuel offer*" and give extra points to loyalty customers to support "premium fuels".²¹⁰ In 2020, MOL's strategy for 2021 was to "[*details on MOL's sales policy and strategy regarding premium fuels in Slovenia*]"²¹¹

- (154) Second, MOL also exerts a significant competitive force on both Petrol and OMV Slovenija through its investments and spending to improve its network and its image.
- (155) As regards the improvement of its stations, the Commission notes that MOL invested, in view of its current size, more than Petrol and OMV Slovenija. First of all, MOL refurbished its entire network between 2016 and 2022²¹² through various projects such as the introduction of the new services such as coffee to go / barista coffee, gastro concept or hot dog preparation²¹³, while OMV Slovenija only refurbished [...] stations and Petrol 85²¹⁴, meaning that they both refurbished less than one-third of their respective networks. [*details on the Target's sales policy for the retail supply of motor fuel regarding the refurbishment of fuel stations in Slovenia*].²¹⁵
- (156) As regards the marketing and advertising spending, it stems from the Parties' data that in 2021 MOL spent approximately [...] ²¹⁶ (approximately [...] per station)²¹⁷, while OMV Slovenija spent approximately [...] ²¹⁸ (approximately [...] per station).²¹⁹ More importantly, MOL has significantly increased its marketing and advertising spending over the last 5 years. Based on the data provided by the Parties, it appears that MOL's spending increased by [...] % between 2018 and 2021, while OMV Slovenija's spending decreased by [...] %.²²⁰
- (157) As a result, even though MOL is the smallest and the last among the three main players to have entered the Slovenian market, it is the one that had in recent years the most significant growth both in terms of stations and volumes. For example, between 2012 and 2021, it increased by 45%²²¹ its number of stations (through both organic and inorganic growth), which is much more than OMV Slovenija, which only increased by 10%,²²² and Petrol that increased by less than 5%.²²³ In terms of volume over the same period, the gap is even wider: MOL's volume increased by [50-60] % while OMV Slovenija's decreased by around [10-20] % and Petrol's volume increased by less than 5%.²²⁴

²¹⁰ Notifying Party's reply to RFI 5, Annex Q7-1.

²¹¹ Notifying Party's reply to RFI 5, Annex Q7-2.

²¹² Notifying Party's reply to RFI 28, question 3.

²¹³ Notifying Party's reply to RFI 21, question 3 b), Annex Q03.b.MOL1.

²¹⁴ Non-confidential reply to RFI 6 to Petrol, question 1 b).

²¹⁵ OMV internal document (filename: Cooperation with agency Mayer-Mccann, annual brief, 2021_01_v1.pdf), slide 3.

²¹⁶ Notifying Party's reply to RFI 21, Annex Q3.a. All stations included.

²¹⁷ Commission's calculations.

²¹⁸ Notifying Party's reply to RFI 21, Annex Q3.a. All stations included.

²¹⁹ Commission's calculations.

²²⁰ Notifying Party's reply to RFI 21, question 3(a), Annexes Q03.a.MOL.1 and Q03.a.OMV.1. Calculations of the Commission.

²²¹ From 37 to 51 non-DARS stations. See Notifying Party's reply to RFI 21, question 7.

²²² From 91 to 101 non-DARS stations, See Notifying Party's reply to RFI 21, question 7.

²²³ Non-confidential reply to RFI 6 to Petrol, question 4.

²²⁴ Non-confidential reply to RFI 6 to Petrol, question 7.

- (158) MOL's successful performance is acknowledged in its internal documents and in particular in its yearly business review in which MOL underlines that its growth both in terms of volume and margin is above market average.²²⁵ This seems to be in line with MOL's ambitious growth plans set out in its internal documents.²²⁶
- (159) MOL's efforts also translated into an increase in its brand awareness. In that respect, MOL appears to be the one that has increased its brand awareness the most. As mentioned above, customer surveys provided by MOL show that MOL's brand awareness has been increasing significantly over the years. While the Commission notes that in view of Petrol's and OMV Slovenija's already high scores it is not a surprise that they did not improve significantly, it confirms insofar as MOL is concerned that it is performing very well on the market and has increasingly exerted a significant constraint on Petrol and OMV Slovenija.
- (160) Based on these elements, the Commission considers that the Transaction will remove an important competitive force exerting significant competitive pressure on both Petrol and OMV Slovenija.

D. Competitive constraint from competitors

- (161) In its assessment of the competitive constraint that competitors would pose towards the new entity, the Commission distinguishes between Petrol on the one hand and smaller players on the other hand.
- (162) The Commission acknowledges that Petrol will remain the main player in Slovenia, often with higher market shares than the Parties. However, the Commission considers it likely that Petrol would benefit from any price increases by the new entity and therefore would have a reduced incentive to compete compared to the situation absent the Transaction.
- (163) The Commission's Horizontal Merger Guidelines specify that "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, [...], also result in a significant impediment to competition*".²²⁷ Petrol as a non-merging firm may also benefit from the reduction of competitive pressure that results from the Transaction, since the new entity's price increase is likely to switch some demand to the rival firms, which in turn can find it profitable to increase their prices.
- (164) This is further supported by the fact that the Parties and Petrol are close competitors, with other players being significantly smaller, and by the fact that MOL exerts already an important competitive constraint.
- (165) Thus, in the event of a price increase by the new entity, Petrol would be the most likely alternative for B2C customers and would directly benefit from the significant loss of competition between the merging parties. Against this background, the Commission considers that Petrol is likely to have less incentive to compete post-Transaction compared to the situation absent the Transaction.

²²⁵ Notifying Party's reply to RFI 5, Annex Q7.1, p.8; Notifying Party's reply to RFI 5, Annex Q7.4, p. 6; see also MOL internal document (filename: CEC_ControllingSlides_20200211.pptx) "[details on MOL's quantities produced and margins calculations in sales of fuel in Slovenia]".

²²⁶ Notifying Party's reply to RFI 5, Annex Q7.6.

²²⁷ Horizontal Merger Guidelines, paragraph 25.

- (166) This is backed by some respondents to the market investigation that consider that MOL and Petrol will have less incentives to compete. For example, one competitor explained that “*MOL would be the second largest player on the market and competition between providers would be significantly reduced*”.²²⁸
- (167) As for the other fuel suppliers on the market, such as Logo, Maxen, or the few white pumpers present in Slovenia, they do not represent credible competitive constraints to the new entity. As explained above, the Parties and Petrol are close competitors, and other competitors do not compete as closely. First, the current market shares of these players are negligible both in terms of volume and number of stations (Maxen 3% and 4% and Logo 1% and 1% in terms of volumes and number of stations respectively).²²⁹ Second, the stations operated by smaller competitors present a different set of characteristics when compared to the Parties’ stations.
- (168) Regarding Maxen in particular, it operates only unmanned stations serving B2C drivers, where the drivers can only pay by card and there is no additional service, such as convenience stores or toilets. In addition, Maxen’s business model is different as its stations are located in rural areas.²³⁰ Finally, according to MOL’s internal documents, Maxen has “*[details on MOL’s view as regards Maxen in Slovenia]*”.²³¹
- (169) As regards Logo, it has its 3 unmanned trucks-only stations that are not accessible to B2C drivers.²³² As a result, it only has 7 stations competing with the Parties’ stations.
- (170) In view of the above, neither Maxen nor Logo are in a position to exert a significant competitive pressure on the Parties.
- (171) As regards the other white pumpers, that all together represent less than 2%²³³ of the volumes sold in Slovenia, it appears that they often operate only one station and at most 3 stations and that a significant number of those stations are unmanned.²³⁴
- (172) The internal documents of the Parties confirm that the smaller competitors are not credible competitors. It stems from OMV Slovenija’s documents there are only three main players and only a very limited number of small players.²³⁵ According to MOL, there are in Slovenia a “*[details on MOL’s views regarding the nature of competition between the players in the fuel market]*”.²³⁶
- (173) Last, the Commission notes that the small retailers are not independent from the main competitors for their sourcing. Most of them source mainly from Petrol and OMV Slovenija²³⁷ and depend on the conditions they get at a wholesale level to

²²⁸ Non-confidential replies to question 15 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

²²⁹ Station-level data provided by the Parties accompanying “Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija” submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

²³⁰ Non-confidential minutes of call with a competitor on 9 February 2022: “[Our] rural filling stations are mostly isolated with not much competitors in the surrounding 30 km.”

²³¹ MOL internal document (filename: Market intelligence SLO - 2021 Q4.xlsx).

²³² Station-level data provided by the Parties accompanying “Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija” submitted by the Notifying Party on 14 November 2022.

²³³ See Table 1.

²³⁴ Form CO, paragraph 310.

²³⁵ OMV internal document, (filename: OMV – Board presentation dated 2 June 2021) attached to the Form CO as Annex 9.15.

²³⁶ Notifying Party’s reply to RFI 5, question 7.7.

²³⁷ And to a more limited extent from smaller players such as or MOL and Leitner (for diesel).

determine their pricing strategies. During the market investigation, many of the small retailers explained that they usually follow the prices set out by the main retail competitors (see in that respect recital (345)). This specific context limits even more the ability of the smaller players to play a significant role on the retail markets and to constrain the new entity post-Transaction.

- (174) In view of the above, the Commission considers that the remaining competitors on the market either lack the ability or the incentive to constrain the new entity.

E. High barriers to entry and expansion

- (175) In the Article 6(1)(c) Decision, the Commission considered that new entrants would face significant barriers to entry and expansion. Any threat of entry would not be sufficiently strong and timely to discipline the new entity.

- (176) As explained below, these findings have been confirmed by the Phase II investigation as there are regulatory and economic barriers making market entry or expansion particularly difficult in Slovenia. As a result, there have been no recent entrants in this market.

E.1. Regulatory and economic barriers

- (177) New entrants must obtain the necessary regulatory approvals to build new stations, which must be obtained for each station separately. The Commission considers that such approvals are complex and lengthy to obtain and can take several years (1 to 3 years according to the Notifying Party²³⁸). These approvals amount to a barrier to enter the market as confirmed by the Parties,²³⁹²⁴⁰ the results of the market investigation (all respondents identified the necessary regulatory approvals as barriers to entry),²⁴¹ the Notifying Party's internal documents ("*details on MOL's views regarding barriers to entry regarding the fuel market in Slovenia*")²⁴², and by the Slovenian Competition Authority ("*The construction of new service stations is limited by long and complicated procedures [...] or obtaining building permits*").²⁴³ As a result, the construction of new stations can take several years.
- (178) Entry and expansion are further limited by the fact that in Slovenia the most attractive locations of fuel stations are already owned and/or operated by larger players such as Petrol and OMV Slovenija.²⁴⁴
- (179) In addition to the barriers set out above, the Commission notes that new players are even less likely to try to enter the Slovenian market for the retail supply of motor fuel (including the non-DARS market to B2C customers) in the foreseeable future because of the lack of economic incentives. First of all, because of the previous and

²³⁸ Form CO, paragraph 312.

²³⁹ Form CO, footnote 234. See also Notifying Party's reply to RFI 5, Annexes Q4.1.3, Q4.2.3, and Q4.3.3.

²⁴⁰ Notifying Party's reply to RFI 5, Annex Q8.4, PowerPoint presentation, p.7: Competition – "*expansion with greenfield is expected to be weak*". See also Annex 9.1.

²⁴¹ Non-confidential replies to question 51 of Questionnaire 1 Retail markets – Competitors in Slovenia.

²⁴² MOL internal document (filename: RE: Growth strategy 2030), page 1.

²⁴³ Market Investigation for Motor Fuels 2017, Public Agency of the Republic of Slovenia for the Protection of Competition, p. 29.

²⁴⁴ MOL internal document (filename: RE: Growth strategy 2030); reply to Article 6(1)(c) Decision, paragraph 42; non-confidential replies to questions 5, 49, and 50 of Questionnaire 1 Retail Markets – Competitors in Slovenia; and non-confidential replies to question 41 of Questionnaire 2 Retail markets – Customers in Slovenia; survey conducted by the national competition authority "*Market Investigation for Motor Fuels 2017, Public Agency of the Republic of Slovenia for the Protection of Competition*", p. 29.

current price liberalisation, fuel retailers' margins in Slovenia have been quite low in comparison with other European countries. The lower level of margins in Slovenia was acknowledged by the SCPA and was identified as one of the main barriers to enter the Slovenian market by the authority²⁴⁵ and also during the market investigation.²⁴⁶ As a result, the Slovenian fuel market does not seem attractive to potential new players.

- (180) Moreover, the Commission notes that this market might even be less attractive since the volumes of motor fuel sold in the Union (including in Slovenia) might decrease in the near future. As part of the Commission's plan to make the Union carbon neutral by 2050, the European institutions are planning to reduce significantly the sale of combustion engine cars in the Union by 2035. If this initiative is passed into law, it will most likely deter investors from continuing to finance investments in the market for the retail supply of motor fuel²⁴⁷ and *a fortiori* investments realising a larger scale entry would be needed in Slovenia especially for players that do not have already a foothold locally. In particular, one of the competitors stated that "*entry costs are too high, given that the volume of the oil business will decline. [...] fuel prices are set by the state (we're selling with loss), our industry will shut down due to technical/ecological progress*".²⁴⁸ In that respect, the majority of competitors indicated in their response to the market investigation that it would not be profitable for a new company to enter the market for the retail supply of motor fuels in Slovenia with a significant market presence in the next 2 years, in particular as sufficient scale is needed to make the entry profitable and there are very few possibilities to build new stations.²⁴⁹
- (181) While the Notifying Party indicated that small scale entry is possible in Slovenia,²⁵⁰ its internal documents point in a different direction, indicating that it is difficult for new entrants to break through without acquisitions, and that there are limited possibilities for organic growth. As explained by MOL,²⁵¹ "*Asset developments and real estate market are dominated by local entrepreneurs and banks, due to specific local / municipality controlled legal environment and high-priced real estate conditions for organic growth possibilities are limited.*" [details on MOL's strategy in the fuel market in Slovenia]²⁵² [details on MOL's strategy in the fuel market in Slovenia]²⁵³.
- (182) Further, and as acknowledged by the Notifying Party, the current price regulation in place in Slovenia also makes market entry less attractive from an economic standpoint even if it is a temporary measure that could be lifted in the near future.²⁵⁴

²⁴⁵ SCPA's Annual Report for 2015, Section 5.4.

²⁴⁶ See non-confidential replies by competitors to question 51 of Questionnaire 1 Retail Markets – Competitors in Slovenia, where low margins was the barrier to entry most mentioned by competitors, after regulatory barriers (permits and authorisations).

²⁴⁷ The growing pressure from environmental legislative requirements is also acknowledged in OMV's Board presentation dated 2 June 2021, see reply to RFI 1, Annex q5.b.1.

²⁴⁸ Non-confidential replies to question 47 of Questionnaire 1 Retail Markets – Competitors in Slovenia; and non-confidential replies to question 49 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁴⁹ Non-confidential replies to question 47 of Questionnaire 1 Retail Markets – Competitors in Slovenia
²⁵⁰ Reply to Article 6(1)(c) Decision, paragraph 42.

²⁵¹ Notifying Party's reply to RFI 2, Annex Q4(i).1.

²⁵² MOL internal document (filename: RE: Growth strategy 2030).

²⁵³ Notifying Party's reply to RFI 5, Annex Q7.8.

²⁵⁴ Reply to Article 6(1)(c) Decision, paragraph 42.

- (183) Against this background, the Commission considers that the entry of new players capable of constraining the new entity is highly unlikely.

E.2 No recent entry

- (184) The above-mentioned barriers make it substantially difficult – if not impossible – to enter the market without a pre-existing presence. This is evidenced by the lack of new entrants who have successfully established themselves in the market in the past decades.
- (185) Regarding the Notifying Party’s argument that market entry could occur through independent fuel stations becoming franchisees,²⁵⁵ the Commission notes that this does not constitute market entry within the meaning of the Horizontal Merger Guidelines. Further, converting independent fuel stations into franchisees would only be capable of impacting market structure where some stations would be bought by a new entity with its own pricing. Such an expansion does not create new entry but might, at best, strengthen the already existing competitive constraint exercised by already existing independent stations by them joining a recognisable brand. Therefore, the Notifying Party’s argument is of limited consequence for the assessment of barriers to entry. In any event, the Notifying Party failed to explain how in Slovenia a market operator could enter through franchising when most stations are operated under company-owned models meaning that there are only a few independent stations (fewer than 18,²⁵⁶ most of them being unmanned) that could indeed decide to switch.
- (186) Against this background, the Commission considers that the entry of new players capable of constraining the new entity is highly unlikely.

F. Absence of countervailing buyer power of customers

- (187) With regard to countervailing buyer power, in the Article 6(1)(c) Decision, the Commission considered that the customers’ power would likely not be sufficient to constrain the new entity. The B2C fuel retail market customer-base is by its mere nature very fragmented and, as a result, B2C customers are pure price takers without any buyer power. This was confirmed in the Phase II investigation.
- (188) In the reply to the Article 6(1)(c) Decision, the Notifying Party indicated that customers are able to monitor retail prices and switch easily to competing stations thus exerting pressure on suppliers.²⁵⁷
- (189) The Parties’ argument is without merit. First, as explained in MOL’s internal documents: “[*details on MOL’s price structure in the fuel market in Slovenia*].²⁵⁸ As a result, most customers do not have any refuelling strategy to reduce their spending. In addition, when they need to fuel, the drivers will drive in the vicinity of their home.
- (190) Second and most importantly, the question is to determine whether the B2C customers, that are price takers as they pay the pump price,²⁵⁹ will have sufficient competition in the relevant catchment areas to switch to another provider. In the areas identified by the Commission as problematic in view of the Parties’ market

²⁵⁵ Form CO, paragraph 312.

²⁵⁶ Station-level data provided by the Parties.

²⁵⁷ Reply to Article 6(1)(c) Decision, paragraphs 44-45.

²⁵⁸ Notifying Party’s reply to RFI 1, Annex Q5.d.2.5.1.

²⁵⁹ Notifying Party’s reply to RFI 1, question 15.

shares, customers have very few or no alternatives to the Parties within a reasonable driving distance.

- (191) Against this background, the Commission considers that the B2C customers will not be in a position to constraint the new entity.

G. Conclusion on the national assessment

- (192) Taking into account the evidence set out above, and in view of the high level of the combined market shares, the significant number of local overlaps, the closeness of competition between the Parties, the resulting loss of the important competitive force that MOL exercises on Petrol and OMV Slovenija pre-Transaction, the lack of other credible competitive constraints on the Parties (other than Petrol), the high barriers to entry and expansion and the absence of countervailing power of B2C customers, the Commission concludes that the Transaction would give rise to anti-competitive non-coordinated effects and would lead to a significant impediment to effective competition on the retail market for the supply of motor fuels to B2C customers from non-DARS stations at a national level.

7.2.1.3.2.2. Local assessment

- (193) As explained in Section 7.2.1.2.3 on geographic market definition, competition between retail station networks has both a national and a local dimension. Therefore, in addition to its findings at a national level, the Commission has assessed whether the Transaction could also lead to a significant impediment to effective market at a local level.

A. Notifying Party's view

- (194) The Notifying Party has carried out its own local assessment based on both an isochrone approach and a customer-centric approach. According to the Notifying Party, this local assessment confirms that the Transaction is unlikely to significantly impede competition anywhere locally on the market for the retail supply of motor fuels from non-DARS stations to B2C customers as the new entity would not be in a position to exert market power to the detriment of customers. The Notifying Party has provided a number of economic submissions in support of its view.
- (195) First, the Notifying Party has carried out its preliminary analysis²⁶⁰ based on the intersection of two approaches: a catchment area assessment based on an 'overlap-based approach' and a 'customer choice analysis' based on the calculation of driving-time brought by the Transaction to the second competing station.²⁶¹ In particular, the Notifying Party's preliminary analysis is based on the following cumulative criteria:
- (a) For the calculation of the catchment area market shares, the Notifying Party uses an 'overlap-based approach' rather than 'presence-based approach', as used in the Commission's previous cases²⁶². Both approaches consist in first defining 'catchment areas' (or isochrones) around each of the Parties' fuel stations (reference fuel stations) defining an area accessible within a certain driving time. The 'presence-based approach' consists in identifying alternative

²⁶⁰ Form CO, paragraphs 500-519 and Annex 56.

²⁶¹ "Note on the methodological issues raised by the Commission's approach to the assessment of the possible effects of the Transaction M.10438 - MOL / OMV Slovenija on the local markets for the supply of motor fuel in Slovenia" submitted by Positive Competition on 12 May 2022 argues about the inadequacy for the Commission's computation of local "market shares".

²⁶² Cases M.9014 – PKN Orlen/Grupa Lotos and M.7603 – Statoil Fuel and Retail/Dansk Fuels.

fuel stations located within the ‘catchment areas’ which are assumed to compete with the reference fuel station. The ‘overlap-based approach’ consists instead in identifying ‘catchment areas’ of other fuel stations that overlap with the ‘catchment area’ of the reference fuel station. The Notifying Party claims that the most likely affected customers are those located in overlapping areas of fuel stations. The Notifying Party further claims that the ‘presence-based approach’ has limitations since customers located around the premises of a fuel station are most likely captive customers of this fuel station and therefore are unlikely to be significantly affected by the Transaction.²⁶³

- (b) The Notifying Party’s calculation of market shares in a given catchment area assumes all stations have a similar size, not weighting them by their importance (for example on the basis of an estimate of the volumes sold).
 - (c) The Notifying Party emphasises the need to apply a ‘customer choice analysis’ in combination with the catchment area market share analysis. The ‘customer choice analysis’ takes into account the increase in customers’ driving times to reach the second and third closest stations that are independent from the new entity. In the absence of information on actual customer locations, the analysis relies instead on data on population at the level of grids of the Slovenian territory in the form of cells of 500 metres by 500 metres (‘grid cells’), dividing the Slovenian territory into approximately 35,600 squares. Driving times are computed from each cell’s centre, where the importance of each cell is weighted by its population.
- (196) The Notifying Party carries out its own analysis of local competition on the basis of the above and argues that the Transaction would have detrimental effects on consumers only in the catchment areas that meet two conditions (‘problematic areas’):
- (a) the post-Transaction market share of the new entity is above 40%, with an increment of at least 5 percentage points; and
 - (b) the additional driving-time brought about by the Transaction to the second competing station represents more than 25% of what was needed to reach the second independent station before the Transaction, or if this additional driving-time is lower than 5% (meaning that the second independent choice is very close to one of the Parties’ fuel stations), the additional driving time to reach the third (independent) station is above 40%.
- (197) Based on the ‘overlap-based approach’ as described above and considering 15 minutes driving-time isochrones, the Notifying Party identifies 35 potentially problematic areas. The introduction of the ‘customer choice analysis’ further restricts the number of problematic areas to 25.
- (198) Second, the Notifying Party then carried out a complementary assessment with the aim of assessing the number of independent suppliers that customers face locally, as well as the change induced by the Transaction.²⁶⁴ In the absence of information on the location of customers, the Notifying Party relied on information provided at the

²⁶³ “Note on the methodological issues raised by the Commission’s approach to the assessment of the possible effects of the Transaction M.10438 – MOL / OMV Slovenija on the local markets for the supply of motor fuel in Slovenia” submitted by Positive Competition on 12 May 2022.

²⁶⁴ “Note on the geographic market definition for the retail sale of motor fuel to B2C customers in Slovenia” submitted by Positive Competition on 29 September 2022.

level of ‘grid cells’. All fuel stations for which a given ‘grid cell’ is within a distance of 15 minutes driving time were considered as available fuel station choices for the population of the ‘grid cell’. Following this approach, the Notifying Party identified the number of independent suppliers²⁶⁵ faced by the population of the ‘grid cell’ pre- and post-Transaction. Based on this information, the Notifying Party provided aggregate figures on the territory and population concerned by the different changes in the number of independent retail fuel suppliers available locally.

- (199) Based on this analysis, the Notifying Party argues that the merger would lead to a change from 4 to 3 or fewer in the number of independent suppliers for only 20% (or 34% if we consider the new entity’s post-Transaction coverage) of the populated territory and for 26% (or 30% if we consider the new entity’s post-Transaction coverage) of the population when considering the population overall.
- (200) Finally, the Notifying Party has carried out a subsequent ‘customer choice analysis’ with an alternative approach by proposing an ‘upward pricing pressure’ (‘UPP’) framework to estimate the possible horizontal non-coordinated effects of the Transaction.²⁶⁶ The ‘UPP’ framework provides an analysis of post-merger pricing incentives if reasonable estimates of diversion ratios and markups can be obtained for the merging firms.²⁶⁷ The approach proposed by the Notifying Party expands upon the standard formulas for the calculation of ‘UPP’ to consider the local dimension of the assessment and introduces the notion of ‘local upward pricing pressure’ (‘LUPP’), incorporating the multi-product (multiple fuel stations) and multi-customer (customers located at different geographical locations) aspects to account for the role of geographical distance in determining the set of alternative solutions for each ‘customer’.
- (201) As described by the Notifying Party, the estimation of ‘LUPP’ is based on two critical inputs: the diversion ratios and the Parties’ margins. Diversion ratios provide the proportion of sales captured by one firm when another firm increases the price of its product. The recapture matters for post-merger pricing incentives only to the extent that profit is earned on the diverted sales, as measured by the margins.
- (202) As customer-specific diversion ratios are not observed, the Notifying Party developed an econometric framework to derive diversion ratios from a logit demand estimation model, where the utility of the customer for a given fuel station is a function of only the distance between the fuel station and the customer’s location. The practical implementation of the model further relies on the following set of methodological and data assumptions:
 - (a) first, in the absence of data on the location of customers’ purchases, the Notifying Party bases its analysis on ‘representative customers’ defined as Slovenian grids of 500 metres by 500 metres. As such, the analysis relies on driving distances between fuel stations and the geographical centre of these grids;

²⁶⁵ Considering the number of independent suppliers in the assessment means that fuel stations under one brand will be considered as one choice, independent of how many fuel stations there are under that brand.

²⁶⁶ “Note on the assessment of horizontal non-coordinated effects of the Transaction M.10438 – MOL / OMV Slovenija on the retail sale of motor fuels for B2C customers in Slovenia” submitted by Positive Competition on 11 October 2022.

²⁶⁷ See Farrell and Shapiro (2010).

- (b) second, in the absence of information on either ‘customer’ or ‘representative customer’ purchases, the Notifying Party calibrates the logit model of demand in such a way that calibrated customer choices result in average catchment areas around fuel stations of 15 minutes.
- (203) The Notifying Party relied on two different sources of information for the Parties’ margins:
- (a) first, it considered B2C margins for the Parties as yearly averages over January-December 2021 for each fuel station and each motor fuel product (diesel main grade and gasoline main grade) (‘baseline scenario’);
 - (b) second, the Notifying Party argued that the levels of motor fuel products margins in 2021 may not reflect equilibrium values. Consequently, it considered average margins in the Union for the period January-September 2020 (‘EU average margins scenario’).
- (204) Based on the ‘LUPP’ implemented under the assumptions described above, the Notifying Party calculated the gross LUPP index (‘gLUPPI’)²⁶⁸ for each fuel station, separately for two motor fuel products, i.e. diesel main grade and gasoline main grade, as follows:
- (a) based on the ‘baseline scenario’ for diesel, the Notifying Party argues that the Transaction is unlikely to have detrimental effects on consumers on the local markets as no fuel stations with gLUPPI above 5% post-Transaction were identified and only two fuel stations with a gLUPPI above 3% were identified. The Notifying Party further reports that the national gLUPPI, calculated as the population-weighted average of the individual fuel stations’ gLUPPIs, is 0.83%;
 - (b) based on the ‘EU average margins’ scenario, the Notifying Party identifies six fuel stations reaching at least 5% gLUPPI and a national gLUPPI of 1.68%.
- (205) Based on the ‘EU average margins’ scenario’, the Notifying Party argues that the Transaction can give rise to a horizontal non-coordinated Significant Impediment to Effective Competition (‘SIEC’) only for six fuel stations.

B. Commission’s assessment

- (206) Firstly, without taking a position on whether an ‘overlap-based approach’ could be justified in principle for the calculation of the catchment area market shares, the Commission considers that the calculation of market shares in a number of stations, as done by the Notifying Party, does not fully capture the market position of the respective competitors.
- (207) Secondly, and similarly, as regards the Notifying Party’s analysis of supply choices at each level of the Slovenian ‘grid cell’, this assessment simply counts the number of independent stations and as such does not consider the relative importance (for example, by weighting the stations by their sales volume) of the respective competing fuel stations and brands.

²⁶⁸ UPP is converted to an index expressed as a percentage of pre-Transaction price to provide a unit-free measure of the merger’s impact on pricing incentives. This is referred to as the gross upward pricing pressure index (‘GUPPI’).

- (208) Thirdly, without taking a position on whether the logic of the ‘customer-centric’ approach could be justified in principle, the Commission considers that the set of assumptions and analytical choices made in the assessment by the Notifying Party do not provide meaningful insights on the competitive constraints exercised between the Parties’ stations. The issues related to the customer-centric approach are explained in more detail in the following recitals.
- (209) Firstly, the analysis undertaken by the Notifying Party relies on data which does not allow for the identification of the location of customers, and instead considers population grids as ‘representative customers’. Even if the exact location of a customer’s home address were known, this assumption would ignore the possibility that customers may decide to drive to the fuel station, for example, on the way from work.
- (210) Secondly, the Notifying Party does not have information on actual customer purchases at a given fuel station to estimate customer’s demand model. To overcome this shortcoming in the data, the Notifying Party proposes an econometric approach to calibrate a customer choice model in a way that the estimated customer purchases result in average size of catchment areas of a given size. However, this exercise does not attempt to match observed actual fuel station-level sales. As the Notifying Party notes itself, its calibration exercise “*aims at matching catchment areas of certain size, that do not result (in the case at hand) from observations but are rather analytical construct*”. The Notifying Party does not undertake to assess the fit of the estimated purchases resulting from the calibration exercise to the actual fuel station-level purchases.
- (211) Thirdly, the Notifying Party considers the average margins observed for the period January-September 2020 in the Union as a proxy for equilibrium margins in Slovenia. However, it is not justified how, for the markets analysed, the competitive conditions in the Union overall could be representative for the competitive conditions in Slovenia.
- (212) Fourthly, the Notifying Party calculates gLUPPI values for diesel main grade and gasoline main grade products. This assessment ignores premium products offered by fuel stations, which are an integral part of the local assessment. While gLUPPI values are strongly driven by the margin level, premium fuels are high margin products. Based on the Parties’ data, the margin for MOL is around [10-20]% for premium diesel and [10-20]% for premium gasoline, whereas the margin is only [5-10]% and [5-10]% for corresponding main grade products.²⁶⁹ As premium products are characterised by higher average margins, this would drive up predicted post-merger pricing incentives.
- (213) Fifthly, the Notifying Party ignores in its assessment of gLUPPI values the interaction between fuel and non-fuel sales. The Notifying Party’s ability to offer customers both groceries and fuel would suggest to account for both the margin earned on the Notifying Party’s fuel sales, as well as the margin earned on the Notifying Party’s non-fuel sales that would divert with those fuel sales. As a result, margins considering also non-fuel margins would be higher, resulting in higher post-merger pricing incentives. In other words, not accounting for this additional margin

²⁶⁹ Commission assessment based on data on prices, volumes and margins provided in response to question 13 of RFI 14. The statistics refer to average margins weighted by volumes during the liberalisation period (1 October 2020 – 13 March 2022) and are expressed as % of price.

source in the gLUPPI calculation could underestimate post-merger pricing incentives.

- (214) Finally, as the Notifying Party notes itself, the UPP approach can only be a “first-order-look” of the possible incentives to change prices following the Transaction. Therefore, the reference to price effects used by the Notifying Party when interpreting the results of gLUPPI calculation is conceptually incorrect.²⁷⁰
- (215) During its preliminary investigation, the Commission analysed local overlaps based on a ‘presence-based’ approach. The ‘presence-based approach’ has been consistently used in the past and assumes that all stations that are geographically close are competing, while competitive pressure from stations that are more distant is deemed negligible. According to this approach, ‘catchment areas’ are defined around each individual retail station of the Parties’ network, on the basis of a radius that is assumed to include the fuel stations that compete with the station in question.²⁷¹ Areas of concern are assumed to arise in catchment areas where the Parties’ fuel stations overlap and face few, if any, other competitors.
- (216) The Commission has carried out its analysis based on two datasets provided by the Parties. First, the Notifying Party submitted a list of all retail fuel stations in Slovenia and ‘outside-but-close-to-border’ fuel stations in neighbouring countries.²⁷² The data contains information regarding each station’s address and geographic coordinates as well as its characteristics. For the Parties’ fuel stations, it provides information on yearly volumes sold and for all fuel stations it provides brand-specific average yearly volumes per station. Second, the Notifying Party submitted data on each station’s catchment area using isochrones, that is, equal driving distance areas around the station, identifying all fuel stations belonging to the catchment area.
- (217) The Commission’s analysis of local overlaps focused on the B2C segment of motor fuel sales from non-DARS stations. The analysis consisted in defining ‘catchment areas’ around each individual retail station of the Parties’ networks, of a radius of 15-minute driving time, that is, isochrones of 15 minutes driving time. Defining ‘catchment areas’ based on driving times accounts for some particularities of respective local markets, for example, differences in traffic across urban and non-urban areas.
- (218) For the calculation of sales shares in a given catchment area, the Commission considers that, similarly to the nation-wide market shares, shares in number of stations can be illustrative of the coverage of a competitor, but do not fully capture the market position of this competitor. To solve this issue and contrary to the Notifying Party’s approach, it is common practice to weight stations by a metric that captures their importance (for example turnover or volumes sold). As a result, the

²⁷⁰ The UPP does not take into account the competitors’ response to the merged entity’s price increase. This response is typically an upward price increase reflecting the overall lessening of competition post-merger. Because it does not take into account the competitors’ responses, or second-order, the UPP method is referred to as a first-order approximation of merger effects. Also, technically UPP measures upward pricing pressure in terms of costs. To turn a UPP estimate into a price increase prediction, further assumptions would have to be made.

²⁷¹ An alternative approach used in previous cases consists in defining the local areas of competition around a given station as the stations that are monitored by the focal station. This approach cannot be implemented in Slovenia in the absence of consistent monitoring data.

²⁷² Fuel stations in Hungary and Austria were captured in the Commission’s analysis. Other neighbouring countries’ stations were excluded as average fuel prices are significantly higher compared to Slovenia, therefore applying a very limited competitive pressure on Slovenian fuel stations.

Commission relied on an approach where fuel stations were weighted by brand-specific national average sales volumes.²⁷³

- (219) Based on the sales shares calculated according to the methodology referred to in the previous recital, the Commission then used the following structural indicators to identify the catchment areas where the Commission considers that the Transaction could lead to significant impediment of effective competition as a result of unilateral non-coordinated effects: catchment areas where (i) the Parties' joint share is more than 40% *and* (ii) the Parties' joint share increases by more than 5 percentage points post-Transaction. Stations located in these catchment areas are referred to as 'problematic' stations. The Parties used the same thresholds to identify problematic stations.
- (220) Using this methodology, the Commission has identified 85 problematic stations, which is a significantly higher number than the one resulting from the Parties' methodology. The Commission based its assessment on data provided by the Notifying Party and has shared its methodology with the Notifying Party in order to enable it to carry out the same analysis. The list of problematic stations, together with market shares, HHI and delta HHI is provided in **Annex 1**.²⁷⁴ As it can be seen in Annex 1, the Commission considers that the Transaction would significantly impede competition at a local level, in the 85 catchment areas identified as problematic based on the above-mentioned filters, not only because of the Parties' high market shares but because of the lack of effective competitive constraints as explained for the national assessment.
- (221) First of all, in many of the 85 catchment areas the new entity would have a market share well above the filters used by the Commission. Its post-Transaction market share would be above 50% in 56 (66%) of the 85 catchment areas. Moreover, the Transaction will greatly change the local dynamics as the increment would be above 10 percentage points in 78 (92%) of the 85 catchment areas.
- (222) In addition, in all the catchment areas, the market is highly concentrated (above 3000 in all of the 85 catchment areas) and the Transaction leads to a significant increment (above 500 in all of the 85 catchment areas and even above 1000 in 61 (72%) of them).
- (223) Second, there is a limited number of competitors in the problematic areas. The Transaction leads to a change from 3 to 2 players (Petrol and the new entity) in 24 catchment areas or from 4 to 3 players (Petrol, the new entity and one independent) in 40 catchment areas. In the remaining 21 catchment areas, where the number of competitors is *prima facie* higher, the Commission notes that the new entity would have on average 11 stations and Petrol has on average 19 stations, facing, on average, only one station of the other players present in the catchment areas (respectively Maxen, Logo or remaining white pumpers).²⁷⁵

²⁷³ As mentioned, the analysis focused on the B2C segment of the motor fuel sale from non-DARS and regular fuel stations only, including outside-but-close-to border fuel stations in Austria and Hungary.

²⁷⁴ In view of the market's main characteristics, the Commission considers that the Transaction cannot significantly impede competition in the 62 local areas where the Parties' market shares do not meet this threshold. In the vast majority of these areas, the increment would be either inexistent or limited (below 5 percentage points) or the Parties' combined market shares would remain quite below 35%.

²⁷⁵ This means that, even if two smaller competitors are present in the area, each of them has generally no more than one station in the entire catchment area, which is much less than the new entity or Petrol.

- (224) Third, white pumpers are frequently located at the fringes of the catchment areas. When considering distances from the reference station at the centre of the catchment area to the closest station of the competitors present in the area, in 66% of the catchment areas, where either Maxen, Logo or a white pumper are present, their stations are located at the fringe of the catchment area as the closest station of MOL/OMV Slovenija and Petrol is generally closer to the reference station than the stations from the other competitors (Maxen, Logo or white pumper).²⁷⁶
- (225) Fourth, as described at a national level, MOL exerts already a strong competitive constraint on Petrol and OMV Slovenija, at a local level thanks to its well-equipped and recently refurbished stations, to its well-known brand and to its innovation. For example, 67 % of MOL's fuel stations located in the problematic areas offer premium diesel and all of them have a Fresh Corner.
- (226) Fifth, as mentioned at a national level (see recitals (175) - (186).), there are high barriers to enter or expand in Slovenia, even at a local level. In particular, approvals are per station and they are complex and lengthy to obtain and it is difficult to identify a suitable plot to build a new station.
- (227) Finally, as already mentioned, B2C customers do not have any possibility to negotiate or refuse to pay the pump price. They are price takers that usually need to refuel in the vicinity of their homes or work.

C. Conclusion on horizontal non-coordinated effects in the market for retail supply of motor fuels B2C (Slovenia)

- (228) Taking into account the evidence set out above, and in view of the high level of the combined market shares, the significant number of local overlaps, the closeness of competition between the Parties, the resulting loss of the important competitive force that MOL exercises on Petrol and OMV Slovenija pre-Transaction, the lack of other credible competitive constraints on the Parties (other than Petrol), the high barriers to entry and expansion and the absence of countervailing power of B2C customers, the Commission concludes that the Transaction would lead to a significant impediment to effective competition on the Slovenian retail market for the supply of motor fuels to B2C customers from non-DARS stations as a result of horizontal non-coordinated effects.

7.2.1.3.3. Retail supply of motor fuel to B2B customers from non-DARS stations (Slovenia)

7.2.1.3.3.1. Notifying Party's view

- (229) The Notifying Party considers that the Transaction does not raise issues in relation to B2B customers. According to the Notifying Party, the competitive constraints from other market players in the B2B segment are stronger than in the overall retail market due to the strong presence of Shell and international fuel card companies (such as DKV).²⁷⁷ As explained above, fuel cards can be offered either by petrol station operators or by (international) fuel card providers, such as DKV or UTA. These fuel card providers are generally not licensed for fuel servicing and do not own any fuel infrastructure but they act as intermediaries between fuel stations and fuel card holders (B2B customers) that group customers together so that they can receive more attractive discounts.

²⁷⁶ Please note that all stations under a brand other than Petrol, Maxen, Logo, MOL, or OMV are considered under the category "white pumpers".

²⁷⁷ Form CO, paragraph 447.

- (230) First, B2B customers such as (i) operators of large truck fleets, i.e., logistic companies, active in the commercial road transportation ('CRT') segment, or (ii) companies with large personal car fleets, i.e. rental car, industrial or other sales or services companies have strong buyer power and may switch suppliers.²⁷⁸
- (231) This is explained by the fact that fuel cards typically do not have any up-front or running costs and therefore customers may hold and often do hold more than one fuel card, maximising the available benefits from different providers.
- (232) Second, even though a minority of customers do organise formal tender procedures, most B2B contracts are negotiated. Regarding OMV Slovenija, less than [<10] % of all issuing volumes are contracted with a prefixed discount without negotiation.²⁷⁹ Even though negotiated B2B card contracts are concluded for an indefinite duration, clients renegotiate the price conditions on a regular basis.²⁸⁰
- (233) Regarding public and B2B tenders, MOL's current network is not large enough to participate in many tenders / requests for quotations organised by B2B customers.²⁸¹ MOL states in that regard that the size of the network has a crucial role in the ability of the bidder to win tenders, as a smaller network, even though the price is lower will result in a lower overall score than the offer of a larger network with a higher price – a practice that significantly benefits Petrol.²⁸²

7.2.1.3.3.2. Commission's assessment

- (234) The Commission concludes that the Transaction is not likely to give rise to a significant impediment to effective competition as a result of horizontal non-coordinated effects on the Slovenian retail market for the supply of motor fuels to B2B customers from non-DARS stations.
- (235) In that respect, the Commission notes that the competitive dynamics on the retail fuel market from non-DARS stations to B2B customers are quite different from the ones in the retail fuel market to B2C customers from non-DARS stations. Section 7.2.1.3.3.2 will focus on the specific characteristics of the non-DARS stations B2B market as compared to the B2C market.

7.2.1.3.3.2.1. Market shares and market structure

- (236) Firstly, the Commission considers that the Parties' combined market share in the retail fuel market from non-DARS stations to B2B customers will remain relatively moderate.
- (237) When looking at the market shares in the market for the retail supply of motor fuel to B2B customers from non-DARS fuel stations, excluding truck-only stations, as set out in Table 6 the Parties will have a market share between [20-40] % based on the data of the last three years. Petrol will continue to hold a market share in number of stations of 59% excluding trucks-only stations, as can be seen from the below table. As a result, the gap between the Parties and Petrol will remain very significant, even post-Transaction. Other competitors hold limited market shares, either in volume or in number of stations.

²⁷⁸ Form CO, paragraph 448.

²⁷⁹ Form CO, paragraph 437.

²⁸⁰ Form CO, paragraph 604.

²⁸¹ Form CO, paragraph 475.

²⁸² Form CO, paragraph 477.

Table 6: Retail B2B non-DARS and non-trucks-only market shares on a national level in 2019-2021 (number of stations and volumes)

	Market shares (number of stations)			Market shares (volumes)		
	2019	2020	2021	2019	2020	2021
Petrol	59%	59%	59%	[60-70]%	[60-70]%	[60-70]%
OMV Slovenija	21%	21%	22%	[10-20]%	[10-20]%	[10-20]%
MOL	11%	11%	11%	[10-20]%	[10-20]%	[10-20]%
Combined (OMV Slovenija and MOL)	33%	32%	32%	[30-40]%	[30-40]%	[30-40]%
Maxen	4%	4%	4%	[0-5]%	[0-5]%	[0-5]%
Logo	1%	1%	1%	[0-5]%	[0-5]%	[0-5]%
Shell	<1%	<1%	<1%	<[0-5]%	<[0-5]%	<[0-5]%
Others	2%	3%	3%	[0-5]%	[0-5]%	[0-5]%

Source: Commission analysis based on national-level data provided by the Parties in RFI 1, Annex 4b-d1, with the assumption that Maxen and Logo operated respectively 21 and 7 stations throughout 2019-2021 with an average per station volume as implied from the data provided by the Parties.

- (238) The pre-Transaction HHI amounts to [4,500-5,000] and the post-Transaction HHI would amount to [5,000-5,500](volume). The HHI increment ([400-500]) is not negligible in an already concentrated market. Again, the degree of concentration is to a significant extent due to Petrol's individual market share, which is very high.
- (239) In addition, the Commission considers that the Parties' combined market share in the B2B non-DARS segment including trucks-only stations will be lower (between [20-40]% on the last 3 years), as shown in Table 7. Petrol will continue to hold market shares in volumes of more than 44%, when including trucks-only stations. As a result, the gap between the Parties and Petrol will remain very significant, even post-Transaction. In addition, Shell accounts for significant volumes (almost 20%).

Table 7: Retail B2B non-DARS including trucks-only stations market shares on a national level in 2019-2021 (number of stations and volumes)

	Market shares (number of stations)			Market shares (volumes)		
	2019	2020	2021	2019	2020	2021
Petrol	55%	55%	55%	[40-50]%	[40-50]%	[40-50]%
OMV Slovenija	21%	21%	21%	[10-20]%	[10-20]%	[10-20]%
MOL	10%	10%	10%	[5-10]%	[5-10]%	[5-10]%
Combined (OMV Slovenija and MOL)	32%	31%	31%	[20-30]%	[20-30]%	[20-30]%
Maxen	4%	4%	4%	[5-10]%	[5-10]%	[0-5]%
Logo	1%	1%	1%	[0-5]%	[0-5]%	[0-5]%
Shell	2%	2%	2%	[20-30]%	[20-30]%	[10-20]%
Others	5%	6%	6%	[5-10]%	[5-10]%	[5-10]%

Source: Commission analysis based on national-level data provided by the Parties in RFI 1, Annex 4b-d1, with the assumption that Maxen and Logo operated respectively 21 and 7 stations throughout 2019-2021 with an average per station volume as implied from the data provided by the Parties.

- (240) The pre-Transaction HHI amounts to [2,500-3,000] and the post-Transaction HHI would amount to [3,000-3,500] (volume). The HHI increment ([200-300]) is not

negligible in an already concentrated market. Again, the degree of concentration is to a significant extent due to Petrol's individual market share, which is very high.

7.2.1.3.3.2.2. Closeness of competition

- (241) As mentioned in the Article 6(1)(c) Decision, the Commission considered that OMV Slovenija and MOL are close competitors in terms of location and types of stations offered. The results of the Commission's Phase I market investigation showed that B2B customers consider MOL and OMV Slovenija together with Petrol as close competitors.²⁸³
- (242) The reasoning in recitals 54(243) to (249), including or excluding trucks-only stations. Indeed, having trucks-only stations is part of the retailers' strategy to have a more targeted approach towards trucks.
- (243) In particular, both Parties have developed offers for B2B customers and they both have networks with a national coverage (even though MOL has a smaller coverage) and similar services, as explained for B2C customers (see Section 7.2.1.3.2.1). However, the Commission also notes that there are some differences between the Parties' B2B business models.
- (244) First, when looking only at regular stations, the Commission notes that while OMV Slovenija has a non-negligible number of DARS stations (17 stations), MOL has only 2 DARS stations. In that respect, the Commission notes that according to the B2B customers that responded to the market investigation, having a significant number of DARS stations is among the most important parameters of competition.²⁸⁴ One B2B customer explains in that respect that in its last tender, OMV Slovenija was particularly strong because it has a "*Significant number of stations on-motorway*" and "*significant number of stations along main roads*".²⁸⁵ No B2B customer pointed to MOL as a strong competitor on this front. The number of DARS stations is even more relevant for B2B customers given that a certain number of them obtain the same price conditions both on DARS and non-DARS stations,²⁸⁶ meaning that they can choose indistinctly between DARS and non-DARS stations.
- (245) Second, when looking at the overall market including trucks-only stations, the Commission notes that both Parties have a different strategy in that respect. OMV Slovenija has an offer dedicated to truck drivers with 4 trucks-only stations (Eurotruck), while MOL does not have any.²⁸⁷
- (246) Given that Slovenia is a transit country with a lot of international traffic, having stations located on DARS stations and trucks-only stations is a competitive advantage for OMV Slovenija and Petrol – an advantage that MOL does not have. These two elements tend to show that OMV Slovenija and MOL are not particularly close, and that OMV Slovenija and Petrol are much closer to one another as regards B2B customers.
- (247) Third, based on the Parties' data, it seems that they only share a rather limited number of B2B customers. In total, MOL and OMV Slovenija share only [<500] B2B customers, which represent [<30]% of MOL's customer base and [<30]% of

²⁸³ Non-confidential replies to questions 31 and 32 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁸⁴ Non-confidential replies to question 30 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁸⁵ Non-confidential replies to question 30.3 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁸⁶ Non-confidential replies to question 11 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁸⁷ Form CO, paragraphs 297-299.

MOL's volumes, as well as [<30]% of OMV Slovenija's customer base and [<30]% of OMV Slovenija's volumes.²⁸⁸

- (248) Fourth, the majority of respondents to the Phase II market investigation pointed out that all players including smaller ones such as Shell, price at a very similar level.²⁸⁹ This confirms that the price does not seem to play a distinctive factor in Slovenia to assess closeness of competition for the B2B customers.
- (249) Overall, the Commission considers that the Parties are close competitors but not as close as on the B2C segment.

7.2.1.3.3.2.3. Removal of an important competitive force

- (250) In the Article 6(1)(c) Decision, the Commission noted that, based on its preliminary investigation, and contrary to its conclusions vis-à-vis the B2C market, MOL might not be an important competitive force in the market for the supply of motor fuels to B2B customers on non-DARS stations.
- (251) No elements arising from the Phase II market investigation challenged this finding.
- (252) The reasoning in recitals (253) to (258) applies to the B2B non-DARS, excluding trucks-only stations. Indeed MOL does not have any trucks-only station and it does not exert any competitive constraint in this respect. The inclusion of trucks-only stations, in particular from Shell, only diminishes MOL's significance as regards B2B customers.
- (253) According to B2B customers, network coverage is a very important element when choosing a fuel provider and it stems from the market investigation that MOL does not have a sufficient coverage to address the B2B customers' needs or to be a strong competitor.
- (254) More precisely, many B2B customers explained that they expect their fuel providers to have either a sufficiently large coverage or at the very least stations located nearby the centre of their business interests. Overall, more than two thirds of the B2B customers that expressed an opinion responded that they request a minimum number of stations to consider a fuel provider.²⁹⁰ When looking at their explanations, the B2B customers emphasise that the network and distance to their stations are very important elements:
- *“With regards to fuel stations, it is important that the stations are not more than 5km away from [our] eight bus depots”;*²⁹¹
 - *“We need a tank station based near our company, and few of them on the borders of Slovenia with other countries”;*²⁹²
 - *“We require that the operator has at least one station located in the Trebnje municipality. We do not require a minimum of stations located elsewhere because we require our fuel near out place/region of operation”;*²⁹³
 - *“In the last tender, minimum requirement regarding network coverage was set: The tenderer must have an appropriate network of service stations or*

²⁸⁸ Notifying Party's response to RFI 28, Question 2.

²⁸⁹ Non-confidential replies to question 16 of Questionnaire 9 B2B Customers in Slovenia.

²⁹⁰ Non-confidential reply to question 21 of Questionnaire 2 Retail markets – Customers in Slovenia.

²⁹¹ Non-confidential reply to question 21.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

²⁹² *Ibid.*

²⁹³ *Ibid.*

pumps so that service stations are not more than 65 km apart measured by road”;²⁹⁴

- “*we need a wide network of stations because our users deliver goods/perform services in whole Slovenia*”;²⁹⁵
- “*gas station near by our company open 24/7*”.²⁹⁶

- (255) The Commission notes that the fact that MOL does not have sufficient coverage to be a strong competitor on the B2B segment has been raised by several customers. As explained by one customer, “*MOL is (...) a significantly stronger competitor to OMV regarding the prices but less strong competitor regarding the network and number of fuel stations*”.²⁹⁷ Another customer emphasised that “*OMV and Petrol are the bigger players in the market. Others do not have a sufficient coverage of the whole area*”.²⁹⁸ A third customer highlighted that “*Petrol and OMV are on the other hand both significant[ly] stronger competitors to MOL regarding the network of fuel stations and the number of petrol stations (stations in Slovenia, whereas Petrol and OMV jointly own around 8 times as many)*”.²⁹⁹ A fourth customer explained that “*OMV and Petrol have excellent network coverage, other not; Maxen is very flexible (although its limited network coverage)*”.³⁰⁰ In that respect, it is also telling that more than half of B2B respondents that expressed a view on this in the market investigation indicated that they did not know whether MOL represents a significant competitive constraint in the market.³⁰¹
- (256) During the Phase II investigation, customers indicated that MOL’s network coverage is rather weak when compared with those of Petrol and OMV Slovenija. In fact, B2B customers attributed similar network coverage scores to both MOL and Maxen.³⁰² Moreover, some customers explained during the Phase II market investigation that, post-Transaction, they would continue to have the same two suppliers (Petrol and OMV Slovenija) which suggests that the Transaction will not have an impact on supplier availability.³⁰³
- (257) MOL appears particularly weak in the eyes of B2B customers who use formal tender procedures, such as customers belonging to the public sector. As explained by the Notifying Party³⁰⁴ and confirmed during the Phase I market investigation, public procurement procedures often require as eligibility requirements that participants operate fuel stations along main roads that do not exceed a specific distance from each other or from the customers’ location or to have a minimum number of stations across Slovenia. The information in tenders submitted by the Parties shows that MOL was not able to participate in a significant number of tenders because it did not

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ Non-confidential replies to question 32.1 of Questionnaire 2 Retail markets – Customers in Slovenia.

²⁹⁸ *Ibid.*

²⁹⁹ Non-confidential replies to question 31.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³⁰⁰ Non-confidential replies to question 32.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³⁰¹ Non-confidential replies to question 34 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³⁰² Non-confidential reply to question 15 of Questionnaire 9 B2B Customers in Slovenia. When asked to rank the competitors’ network, while the vast majority of the customers gave 4 or 5 to Petrol and OMV Slovenija; the vast majority of them gave a 3 or less to MOL, quite close to smaller players such as Maxen or Logo.

³⁰³ Non-confidential version of reply to question 22.1 of Questionnaire 9 B2B Customers in Slovenia.

³⁰⁴ Form CO, paragraph 475.

meet these criteria.³⁰⁵ In addition, almost half of the competitors declared that in most cases they are prevented from submitting offers to B2B customers (including both public and private companies) due to their requirements (e.g. number of stations).³⁰⁶ This is also confirmed by qualitative elements from the market investigation. One public customer explained that *“This public procurement has now been in place for roughly 15 years. PETROL d.d., Ljubljana and OMV Slovenija, d.o.o. have jointly participated and won tenders every two years over the last few years. In 2019 MOL Slovenija d.o.o. participated but was excluded from the tender process because it did not meet the relevant criteria”*³⁰⁷

- (258) In view of the above, MOL is not a particularly strong competitor on the B2B segment and, as a result, the Transaction will not remove a significant competitive force on the market.

7.2.1.3.3.2.4. Competitive constraint from competitors

- (259) In its assessment of the competitive constraint that competitors would pose on the new entity, the Commission notes that the market dynamics are different on the B2B segment when compared to the B2C segment.
- (260) First of all, when looking only at regular stations and excluding trucks-only stations, the Commission notes that, thanks to its large coverage all over the Slovenian territory, Petrol has a particularly high and stable market share in the B2B segment (well above 60% when looking at volumes). Thanks to its very broad network coverage, Petrol has stations all over the Slovenian territory and can generally address the needs of all types of customers, wherever their localisations. Petrol is particularly strong in relation to clients organizing tenders. As explained by the Notifying Party, in some tenders, the selection of the winning supplier is based on formulas that not only take into account price as a relevant parameter, but also the number of fuel stations. Therefore, the size of the network has a crucial role in the ability of the bidder to win the tender, as a smaller network even with a lower price will result in a lower overall score than the offer of a larger network with a higher price - a practice that grants a significant advantage to Petrol.³⁰⁸
- (261) The Commission notes that the two other competitors that offer B2B services, Maxen and Logo, have limited market shares (4% and 1%, respectively). Maxen has its own B2B offering and many white pumpers are part of joint international card schemes (such as UTA or DKV). One customer underlined in response to the market investigation that one of Maxen’s strengths is that it is *“very flexible (although its limited network coverage)”*.³⁰⁹
- (262) Second, the situation is different when including trucks-only stations. Considering the overall market, including track stations, the Parties will also face competition from Shell, which is a relatively strong player on the B2B market with a market share of almost 20% for truck drivers. In addition, Shell’s fuel cards are also accepted as a paying method at more than 200 partner pumps (including OMV

³⁰⁵ Form CO, Annex 63.2.

³⁰⁶ Non-confidential replies to question 25 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

³⁰⁷ Non-confidential replies to question 23.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³⁰⁸ Form CO, paragraph 477. See for example the tender issued by the Ministrstvo za Javno Upravo (Ministry of public administration) in 2017 and 2019: https://www.enarocanje.si/Obrazci/?id_obrazec=400333.

³⁰⁹ Non-confidential replies to question 32.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

Slovenija³¹⁰ and Petrol) meaning that non-truck B2B drivers can also benefit from Shell's pricing conditions.³¹¹ As regards Logo, it has trucks-only stations through its network and accepts international cards (DKV, UTA, Eurowag, AS24, IQ card, DTS).³¹² In addition, it also offers a B2B card that works only within its network to a limited number of customers.³¹³ According to Logo, its card customers benefit from a good IT management system (e.g., setting of spending limits, blocking cards easily, daily view of fuel purchases) and also from discounts.³¹⁴

- (263) In view of the above, the Transaction will not significantly affect competitors' ability or motivation to compete, which is already limited, in view of Petrol's position, in particular when looking only at regular stations. When looking at all stations, including trucks-only stations, Shell is already a rather significant competitor, managing to sell important volumes (almost 20% with only 8 stations).

7.2.1.3.3.2.5. Countervailing buyer power of customers

- (264) The Commission notes that the majority of B2B customers are in not mere price takers, unlike B2C customers and B2B customers have generally the ability to negotiate with their fuel providers.
- (265) First of all, B2B customers negotiate with their providers in order to obtain fuel cards that (i) can be used as a paying method when refilling and (ii) allows them to benefit from a centralised invoicing system.
- (266) To select fuel card providers, the majority of B2B customers that responded to the market investigation indicated that either they organise structured tenders or send quotations to several players.³¹⁵ Almost half of the B2B customers of the ones that expressed an opinion responded that they organise tenders and the same proportion explained that they negotiate with their fuel providers.³¹⁶ The vast majority of the B2B customers that responded indicated that they negotiate with their fuel providers every year or every two years.³¹⁷ While they do not typically change supplier at the end of their contract, they remain open to this possibility³¹⁸ and almost all the B2B customers that expressed an opinion consider that there are no switching costs.³¹⁹
- (267) Moreover, a large majority of B2B customers that expressed an opinion explained that they hold several fuel cards (usually between 2 and 3), meaning that they negotiate with several providers and obtain price conditions from several of them.³²⁰ Most customers have fuel cards from the main providers (Petrol, OMV Slovenija, MOL or Shell).³²¹
- (268) In addition, the Commission understands that Slovenia has significant international traffic, is closely connected to other countries, and B2B customers who are active internationally can easily travel through Slovenia without stopping to refuel in

³¹⁰ Form CO, paragraph 419.

³¹¹ Form CO, paragraph 445.

³¹² Non-confidential replies to question 5.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³¹³ Non-confidential minutes of call with a competitor on 25 January 2022.

³¹⁴ Non-confidential minutes of call with a competitor on 25 January 2022.

³¹⁵ Non-confidential replies to question 20 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³¹⁶ Non-confidential replies to question 14 of Questionnaire 9 B2B Customers in Slovenia.

³¹⁷ Non-confidential replies to question 17 of Questionnaire 9 B2B Customers in Slovenia.

³¹⁸ Non-confidential replies to question 23 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³¹⁹ Non-confidential replies to question 24 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³²⁰ Non-confidential replies to question 2 of Questionnaire 9 B2B Customers in Slovenia.

³²¹ Non-confidential replies to question 2.2 of Questionnaire 9 B2B Customers in Slovenia.

Slovenia, but they can instead use alternative providers located abroad. This means that in the case of a price increase imposed by the new entity, they could switch volumes to fuel retailers located abroad. It stems from the market investigation that a majority of the B2B customers that expressed an opinion, refuel outside Slovenia to a certain extent. Some B2B customers could offset any price increase or other deterioration of the conditions they obtain. In that respect, it is relevant to note that a non-negligible number of customers consider that the market is wider than national.³²² One customer explained during the market investigation that: *“The Group monitors prices daily and decides to buy fuel from whichever gas station is offering the best price. The Group decides whether to fuel in Austria or Slovenia depending on the price that day.”*³²³ During the market investigation, another customer explained: *“This depends on the fuel prices themselves [sic].... If they are much higher than [sic] ones in neighbour [sic] countries we will refuel elsewhere.”*³²⁴

- (269) As a result, B2B customers are generally able to secure non-negligible discounts as compared to totem prices. A significant number of the B2B respondents to the market investigation consider that they benefit from a discount of more than 3% as compared to totem prices and more than one quarter of them consider that they get a discount of between 1% and 3%.³²⁵ This is consistent with the data provided by the Notifying Party according to which, on average, MOL granted to B2B customers a discount of EUR [...] cent in 2021 representing [...] % of the totem price³²⁶ and OMV Slovenija of up to EUR [...] cent in 2020-2021.³²⁷

7.2.1.3.3.2.6. Results of the market investigation on the impact of the Transaction

- (270) The Commission notes that both during the Phase I and II market investigations, B2B customers did not raise significant concerns in relation to the Transaction.
- (271) First, the majority of the B2B customers who expressed an opinion during the Phase II market investigation consider that post-Transaction: (i) prices will remain the same or even decrease and (ii) the intensity of competition will either remain the same or increase.³²⁸ Very few B2B customers expressed concerns that the prices might increase, or that the intensity of competition might decrease and in general, the Commission notes that those concerns are not particularly substantiated.
- (272) Second, a large majority of the B2B customers who expressed an opinion, either during the Phase I or the Phase II market investigation, consider that if the Parties were to increase their prices after the Transaction, they would have alternative suppliers to shift their volumes to.³²⁹ It appears that should the B2B customers be unsatisfied, they can switch quite easily and they will continue to do so. For example, one customer explained: *“We have already turned to other suppliers, as OMV could*

³²² Non-confidential replies to question 17 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³²³ Non-confidential minutes of call with a customer on 15 February 2022.

³²⁴ Non-confidential replies to question 21.1 of Questionnaire 9 B2B Customers in Slovenia.

³²⁵ Non-confidential replies to question 4 of Questionnaire 9 B2B Customers in Slovenia.

³²⁶ Reply to RFI 1, Annex 15.1. This amount is already quite significant when taking into account the fact that retail margins in Slovenia are considered as particularly low by the retailers as compared to other countries (See Section (354) in the coordinated effects part).

³²⁷ Form CO, paragraph 427.

³²⁸ Non-confidential replies to questions 21-24 of Questionnaire 9 B2B Customers in Slovenia. In Phase I, the responses were mixed and more inconclusive (Non-confidential replies to questions 42-43 of Questionnaire 2 Retail Markets – Customers in Slovenia).

³²⁹ Non-confidential replies to question 45 of Questionnaire 2 Retail Markets – Customers in Slovenia.

*not offer us the same conditions as in the past. But we still have their fuel cards to use them occasionally.*³³⁰

- (273) Those findings have been confirmed by the Phase II market investigation. When asked if, post-Transaction, there would remain sufficient suppliers in Slovenia offering fuel cards to multisource in the most efficient way or to play suppliers against each other to receive the best offer, the majority of the B2B customers who expressed an opinion responded positively.³³¹ Moreover, the majority of the respondents that expressed an opinion said that if the new entity were to offer worse conditions, they would continue holding their fuel cards but reduce consumption by turning to alternative suppliers, confirming that the B2B customers consider that they have sufficient alternatives.³³²
- (274) Third, the results from the market investigation show that a majority of customers that expressed an opinion considered that the Transaction will not have a negative impact on the market for the supply of retail fuel to B2B customers but consider that the impact would be either positive or neutral.³³³ Qualitative elements also point to the fact that the Transaction will not change the overall market structure. In this respect, one customer explained that *“the fuel market in Slovenia has been highly consolidated for years and this transaction will not change the market significantly.”*³³⁴ Another one highlighted that *“Until now we have 2 big suppliers (Petrol and OMW), now will be Petrol and MOL (just change of name).”*³³⁵ A third one said: *“we expect that the situation will remain the same as it is now”*.³³⁶
- (275) Fourth, certain customers see the Transaction positively as it will create an alternative to Petrol. In that respect, one customer underlined that *“the Transaction could have a positive effect. The combination of MOL and OMV will lead the new entity to be present all over Slovenia. Since the new entity will have a similar geographical coverage to Petrol, [customer]’s negotiation position with Petrol will improve and it hopes to get better discounts after the Transaction”*.³³⁷ Another explained that *“regarding our current contract, the Transaction would likely result in better access to a greater number of fuel stations for a smaller price given that MOL does apply more competitive prices.”*³³⁸ Some customers confirmed during the Phase II market investigation that they expect better conditions to be offered by the new entity³³⁹ or that *“MOL should stress the market and drive prices down post-Transaction.”*³⁴⁰

7.2.1.3.3.3. Conclusion on the B2B segment

- (276) When looking only at the regular stations, excluding the trucks-only stations, the Commission considers that the Transaction would not result in a significant impediment to effective competition in the retail fuel market from non-DARS

³³⁰ Non-confidential replies to question 18.1 of Questionnaire 9 B2B Customers in Slovenia; and non-confidential minutes of call with one B2B customer on 9 February 2022.

³³¹ Non-confidential replies to question 19 of Questionnaire 9 B2B Customers in Slovenia.

³³² Non-confidential replies to question 18 of Questionnaire 9 B2B Customers in Slovenia.

³³³ Non-confidential replies to question 22 of Questionnaire 9 B2B Customers in Slovenia.

³³⁴ Non-confidential replies to question 20.1 of Questionnaire 9 B2B Customers in Slovenia.

³³⁵ Non-confidential replies to question 20.1 of Questionnaire 9 B2B Customers in Slovenia.

³³⁶ Non-confidential replies to question 42.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³³⁷ Non-confidential minutes of call with a customer on 11 February 2022.

³³⁸ Non-confidential replies to question 42.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

³³⁹ Non-confidential replies to question 22.1 of Questionnaire 9 B2B Customers in Slovenia.

³⁴⁰ Non-confidential replies to question 23.1 of Questionnaire 9 B2B Customers in Slovenia.

stations to B2B customers in Slovenia in view of the Parties' moderate market shares, of the existence of the size and market share of Petrol, of the limited competitive constraint exercised by MOL, and of the certain degree of buyer power held by the B2B customers.

7.2.1.3.4. Conclusion on horizontal non-coordinated effects

(277) In relation to the Slovenian retail market for the supply of motor fuels to B2C customers from non-DARS stations, for the reasons set out above, the Commission considers that the Transaction would give rise to a significant impediment to effective competition as a result of horizontal non-coordinated effects.

(278) As for the Slovenian retail market for the supply of motor fuels to B2B customers from non-DARS stations, as explained above, the Commission considers that the Transaction will not lead to a significant impediment to effective competition as a result of horizontal non-coordinated effects.

7.2.1.4. Competitive assessment: horizontal coordinated effects

7.2.1.4.1. Legal framework for the assessment of horizontal coordinated effects

(279) Coordinated effects may arise “*as the result of a concentration where, in view of the actual characteristics of the relevant market and of the alteration in its structure that the transaction would entail, the latter would make each member of the dominant oligopoly, as it becomes aware of common interests, consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a common policy on the market with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 81 EC*”.³⁴¹

(280) A concentration occurring in a concentrated market may significantly impede effective competition due to horizontal coordinated effects if, through the creation or strengthening of a collective dominant position, it increases the likelihood that firms would be able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A concentration may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.³⁴²

(281) Pursuant to the Horizontal Merger Guidelines, “*coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination*”.³⁴³ Coordination may take various forms, such as setting prices above the competitive level, limiting production or capacity, or dividing the market, for instance by geographic areas or by customer characteristics, or by allocating contracts in bidding markets.³⁴⁴ Coordination may therefore relate to various parameters of competition.

³⁴¹ Case T-342/99 - *Airtours v Commission*, paragraph 61. See also Horizontal Merger Guidelines, paragraph 39.

³⁴² Case C-413/06 P - *Bertelsmann and Sony Corporation of America v Commission*, paragraph 122; Horizontal Merger Guidelines, paragraph 39.

³⁴³ Horizontal Merger Guidelines, paragraph 41.

³⁴⁴ Horizontal Merger Guidelines, paragraph 40.

- (282) The Commission verifies, first, whether it would be possible to reach terms of coordination in the investigated markets and whether, second, the coordination is likely to be sustainable.³⁴⁵ In this regard, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.³⁴⁶ In applying those criteria, it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination.³⁴⁷
- (283) In examining the possibility and sustainability of coordination, the Commission should specifically consider the changes that the transaction brings about. The reduction in the number of firms in a market may, in itself, be a factor that facilitates coordination. A merger may also increase the likelihood or significance of coordinated effects in other ways. For instance, a merger may involve a ‘maverick’ firm that has a history of preventing or disrupting coordination, for example by failing to follow price increases by its competitors, or has characteristics that gives it an incentive to favour different strategic choices than its coordinating competitors would prefer. If the merged firm were to adopt strategies similar to those of other competitors, the remaining firms would find it easier to coordinate, and the merger would increase the likelihood, stability or effectiveness of coordination.³⁴⁸

7.2.1.4.2. Notifying Party’s view

- (284) The Notifying Party is of the view that the Transaction will trigger a pro-competitive transformation of the Slovenian retail fuel market and it should be considered as fundamentally pro-competitive.
- (285) In particular, the Notifying Party is of the view that the Transaction will not lead to any coordinated effects and that the conditions necessary for coordinated effects to be established are not present with respect to the affected markets.
- (286) Firstly, the Notifying Party states that there is no pre-existing coordination on the market as no form of coordination between market players has ever been observed or identified in the market. This is because: (i) MOL has previously been acting as a price challenger; (ii) MOL is planning to increase its retail volume; (iii) there are strong differences in the level of vertical integration between MOL and Petrol; (iv) there is no plausible deterrent mechanism to punish deviation from the terms of coordination; and (v) the instability of the current market circumstances, *i.e.*, price increases and fuel shortages.³⁴⁹ The Notifying Party also notes that MOL and Petrol would not be able to and would have no incentive to coordinate their behaviour solely for B2C sales from non-DARS stations.³⁵⁰

³⁴⁵ Horizontal Merger Guidelines, paragraph 42.

³⁴⁶ Case T-342/99 - *Airtours v Commission*, paragraph 62; Case C-413/06 P - *Bertelsmann and Sony Corporation of America v Commission*, paragraph 123; Horizontal Merger Guidelines, paragraph 41.

³⁴⁷ Case C-413/06 P - *Bertelsmann and Sony Corporation of America v Commission*, paragraph 125.

³⁴⁸ Horizontal Merger Guidelines, paragraph 42.

³⁴⁹ Form CO, paragraphs 699 *et seq.*

³⁵⁰ Reply to Article 6(1)(c) Decision, paragraph 83.

(287) The Notifying Party is also of the view that the Transaction will not introduce coordination to the market. On the contrary, the Notifying Party expects the Transaction to create a competitor that will be able to and will have a well-defined interest to challenge Petrol, which is, in the Notifying Party's view, the so far unchallenged market leader.³⁵¹ This is because: (i) MOL is planning to extend its competitive pricing to OMV Slovenija, making it the maverick;³⁵² and (ii) as a result of its profit maximising strategy, the new entity will pass on post-Transaction efficiencies to customers and will vigorously compete with Petrol. It is the Notifying Party's view that the creation of a viable network size is only possible to achieve by way of a merger involving the second and the third largest market players in Slovenia.³⁵³

7.2.1.4.3. Commission's assessment

(288) In the present case, the Commission has examined coordination on prices. For the reasons set out in the following Sections, the Commission considers that the Transaction is likely to give rise to a significant impediment to effective competition as a result of coordinated effects on the market for the retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia, independently of whether it leads to non-coordinated effects.³⁵⁴ In conducting its investigation, the Commission has assessed whether and how reaching terms of coordination would be possible (Section 7.2.1.4.3.1), whether coordination would likely be sustainable (Section 7.2.1.4.4), and how the Transaction affects the incentives of market participants to coordinate (Section 7.2.1.4.5). For these purposes, the Commission has taken into account the available relevant information on the characteristics of the Slovenian motor fuel retail market, including its structural features and the past behaviour of firms.³⁵⁵

7.2.1.4.3.1. Ability to reach terms of coordination

(289) In order for firms to engage in a coordinated conduct, it is necessary for them to be able to reach terms of coordination. This is more likely to happen in markets where it is relatively simple to reach a common understanding on the terms of coordination. This is the case where coordinating firms have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.³⁵⁶ The less complex and the more stable the economic environment (for example, oligopolistic markets), the easier it is for the firms to reach a common understanding on the terms of coordination.³⁵⁷

(290) The present Section examines how Slovenian market players could reach terms of coordination post-Transaction in the Slovenian motor fuel retail market. After first reviewing past cases of coordination in the EEA motor fuel retail markets and the

³⁵¹ Form CO, paragraphs 699 and following.

³⁵² Reply to Article 6(1)(c) Decision, paragraph 8.

³⁵³ Form CO, paragraph 12.

³⁵⁴ The Commission clarifies that the same analysis on potential horizontal coordinated effects is not carried out in relation to the market for the retail supply of fuel to B2B customers because there is no transparency in this market. Different prices are set by different retailers depending on the customer and these prices are not made public. Therefore, one of the main requirements for coordinated effects to be considered – *i.e.*, market transparency – is missing in the market for the retail supply of fuel to B2B customers.

³⁵⁵ Horizontal Merger Guidelines, paragraph 43.

³⁵⁶ Horizontal Merger Guidelines, paragraph 44.

³⁵⁷ Horizontal Merger Guidelines, paragraph 45.

past investigations/sector inquiries on these markets by the SCPA in Section 7.2.1.4.3.1.1, Section 7.2.1.4.3.1.2 examines the key characteristics of the Slovenian motor fuel retail market and Section 7.2.1.4.3.1.3 analyses the past behaviour of the Parties and Petrol in the market and how this reflects their ability to reach terms of coordination and illustrates how a likely future coordination post-Transaction could take place.

7.2.1.4.3.1.1. The EEA markets for the retail sale of motor fuels have been prone to coordination in the past

- (291) In investigating coordinated effects, the Commission takes into account all available relevant information on the characteristics of the markets concerned, including both structural features and the past behaviour of firms. Evidence of past coordination is important if the relevant market characteristics have not changed appreciably. Likewise, evidence of coordination in similar markets may be useful information.³⁵⁸
- (292) The Commission's investigation of the Transaction revealed evidence of past, recent cases or ongoing investigations on cartels or tacit coordination between EEA motor fuel suppliers in a number of EEA markets, some of them involving the Parties.
- (293) In Germany, the National Competition Authority ('NCA'), the *Bundeskartellamt*, recently cleared the concentration consisting in the acquisition by EG Group of the OMV Retail Deutschland refuelling network subject to commitments. The *Bundeskartellamt* observed that, in some markets, the acquisition would have led to a significant impediment to effective competition due to coordinated effects. In particular, the *Bundeskartellamt* noted that the EG Group would have increased its market share in a way that would have enabled or further facilitated the implicit coordination of prices and price-setting patterns between this undertaking and BP/Aral and Shell. Despite the fact that the degree of concentration in these markets was significantly lower than in the Slovenian motor fuel markets, the German NCA considered coordination likely due to (i) the very high level of market transparency in the motor fuel markets, which would allow the monitoring of coordination, (ii) the existence of effective deterrent mechanisms (in the form of price wars) which would discourage any deviation from coordination, and (iii) the fact that reactions from outsiders – in the form of potential new entrants or countervailing buyer power — were unlikely or insufficient to jeopardise the stability of the coordination outcome.³⁵⁹
- (294) In Bulgaria, the NCA has in the past investigated a cartel on the retail motor fuel markets. The conduct consisted of coordinated behaviour on pricing and exchange of sensitive commercial information between market participants operating at the same level. The Bulgarian NCA ultimately established that the market was predisposed to price coordination and imposed remedies to tackle market distortions.³⁶⁰
- (295) In Romania, the NCA has imposed fines on several companies (among others MOL, OMV Group, Lukoil, Rompetrol and ENI) for anticompetitive agreements in motor fuel markets. The companies involved were found to have exchanged information about their future conduct on the market and to have entered into an agreement to

³⁵⁸ Horizontal Merger Guidelines, paragraph 43.

³⁵⁹ Decision of the *Bundeskartellamt* in case B 8-77/21.

³⁶⁰ Bulgarian Competition Authority, Lukoil Bulgaria / Eco Bulgaria / Shell Bulgaria / OMV Bulgaria / NIS PETROL, Decision N° 318, 28 March 2017.

stop the retail of gasoline ‘Eco Premium’, thereby infringing both Article 101 TFEU and the corresponding national competition provision.³⁶¹

- (296) Finally, the Commission takes note of the sector inquiry conducted in 2021 by the SCPA on the motor fuel retail markets in Slovenia³⁶² (the ‘2021 sector inquiry’), following a previous inquiry in 2017. In the 2021 sector inquiry, the SCPA notes that competition in the motor fuel retail market in Slovenia has deteriorated in the last years.
- (297) Concretely, the SCPA notes in the 2021 sector inquiry that the national website goriva.si, introduced by the Slovenian Government on March 2019, allows market players to quickly react and adjust very rapidly their prices to the price set by the first mover.³⁶³ After analysing the price changes published on the national website goriva.si during the period of liberalisation, the SCPA concluded that fuel suppliers in Slovenia frequently changed prices on the same day although it did not find a satisfactory reason to explain this fact.³⁶⁴
- (298) The SCPA indicates in the 2021 sector inquiry, first, that the Slovenian retail motor fuel market is a homogenous market subject to stable and inelastic demand; second, that the market is highly concentrated with one or two players controlling the largest part of the market; third, that entry or expansion of new entrants is unlikely, due to high barriers to entry/expansion (e.g., small market, long and complex bureaucratic procedures related to the construction of new fuel stations and the most suitable locations being already occupied).³⁶⁵
- (299) At the same time, the SCPA observes in the inquiry that most retailers increased their margins during the liberalisation period. In the SCPA’s view, this would mean that the increase in fuel prices was influenced not only by the purchase price at wholesale level – which represents the largest part of the final retail fuel price – but also by the possibility that the liberalisation allowed retailers to increase prices.³⁶⁶
- (300) The 2021 sector inquiry also considers that, even though the goal of the Slovenian Government through deregulation of the prices of motor fuels was to attract new suppliers, in practice, this has not taken place and, given the high barriers to entry, it is not expected that it will happen in the near future. On the contrary, the SCPA notes that the potential acquisition of the second largest player (OMV Slovenija) by the third player (MOL) will reduce the number of players. The conclusion of the SCPA is that, following the abolition of the retail price regulation in October 2020, competition in motor retail fuel markets in Slovenia has decreased.³⁶⁷
- (301) In these circumstances and taking into account the characteristics of the market (concentration, transparency, high barriers to entry), the SCPA concludes that “*fuel suppliers do not need to reach any agreement to ensure that they operate in a coordinated manner*”.³⁶⁸

³⁶¹ Romanian Competition Authority, Case number: 97/21.12.2011, 21 December 2011.

³⁶² “Raziskava trga pogonskih goriv II” (Motor fuel market investigation II), December 2021.

³⁶³ 2021 sector inquiry, section 4.5.

³⁶⁴ 2021 sector inquiry, section 4.8.2.

³⁶⁵ 2021 sector inquiry, section 5.

³⁶⁶ 2021 sector inquiry, section 5.

³⁶⁷ 2021 sector inquiry, section 5.

³⁶⁸ 2021 sector inquiry, section 5.

- (302) The elements provided above, including all the examples of concluded and/or ongoing investigations into the European markets for the retail supply of motor fuel, as well as the specific pieces of evidence in relation to Slovenia and the takeaways from the 2021 sector inquiry, point to the market for the retail supply of motor fuel presenting certain characteristics making it prone to coordination.

7.2.1.4.3.1.2. The characteristics of the Slovenian motor fuel retail market facilitate coordination

- (303) According to the Court of Justice of the European Union, “*tacit coordination is more likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work, and, in particular, of the parameters that lend themselves to being a focal point of the proposed coordination*”.³⁶⁹
- (304) As already indicated, generally, the less complex and the more stable the economic environment, the easier it is for the companies active in a given market to reach a common understanding on the terms of coordination. For instance, it is easier to coordinate among a few players than among many. It is also easier to coordinate on a price for a single, homogeneous product, than on hundreds of prices in a market with many differentiated products. Similarly, it is easier to coordinate on a price when demand and supply conditions are relatively stable than when they are continuously changing. Moreover, in markets where innovation is important, coordination may be more difficult since innovations may allow one firm to gain a major advantage over its rivals.³⁷⁰
- (305) The following recitals address the main characteristics of the Slovenian motor fuel retail market, namely, concentration level (from recital (306) to recital (311)), relative stability (from recital (312) to recital (321)), homogeneous nature (from recital (322) to recital (326)) and high transparency (from recital (327) to recital (331)).

A. Highly concentrated market

- (306) Generally, it is considered easier to coordinate among a few players than among many. The Slovenian market for the retail supply of motor fuels to B2C from non-DARS stations is highly concentrated. Post-Transaction, the new entity and Petrol will hold a *de facto* duopoly in that market, with no other existing market player exerting a significant competitive constraint on them.
- (307) First, an analysis of the market shares reveals that the new entity and Petrol will hold the quasi totality of the market post-Transaction, both at national and local level.
- (308) At national level, post-Transaction, MOL and Petrol would hold post-Transaction a combined market share of [90-100]% in the Slovenian market for the retail supply of motor fuel to B2C customers from non-DARS stations in terms of volume and of 90% in terms of number of stations, with a market share increase (compared to the combined market share of Petrol and OMV Slovenija pre-Transaction) of, respectively, [10-20] percentage points and [10-20] percentage points. As explained in Section 7.2.1.3.2.1, the post-Transaction HHI will be [4,000-4,500] with a Transaction *delta* of [900-1,000] considering market shares in volume and 4431 and 459, respectively, taking into account shares in terms of stations. The next competitor in the market would be Maxen, with a 3% share in terms of volume and 4% in terms

³⁶⁹ Case C-413/06 P - *Bertelsmann and Sony Corporation of America v Commission*, paragraph 123.

³⁷⁰ Horizontal Merger Guidelines, paragraph 45.

of stations. All other market players would have, combined, fewer than 30 stations and a share of less than 6% of the market in terms of stations and less than [0-5]% in terms of volumes sold.³⁷¹

- (309) At local level, the picture does not significantly differ: in more than 90% of the 470 local areas, where either MOL or OMV Slovenija are active pre-Transaction, the combined market share of the new entity and Petrol in the market for the retail supply of motor fuels to B2C from non-DARS stations would be higher than 90%.
- (310) Second, the closeness analysis conducted by the Commission starting from recital (104) reveals that the remaining competitors in the market are not only considerably smaller in terms of size than the Parties or Petrol, but they are also significantly more distant in terms of network coverage, brand awareness and services, and do not exert any meaningful competitive constraint on the Parties. The largest competitor in terms of size, Maxen, is a very distant competitor to the Parties, as Maxen itself has acknowledged and as the market investigation in Phase I confirmed.³⁷² Specifically, Maxen indicated “*they would be very small compared to Petrol and MOL*”.³⁷³ Not only does Maxen generally price its products above those of the Parties, but also it is mainly located in geographic areas with limited competition.³⁷⁴ As regards other competitors, the Notifying Party confirms that none of these operators represents a significant competitive constraint to the Parties.³⁷⁵
- (311) In essence, this means that post-Transaction, the only meaningful competitor of the new entity in the market will be Petrol. Therefore, any terms of coordination in the market post-Transaction would only need to be reached between two players: the new entity and Petrol.

B. Sufficiently stable market environment

- (312) It is easier to coordinate on prices when demand and supply conditions are relatively stable than when they are continuously changing. In particular, volatile demand, substantial internal growth by some firms or frequent new entry may indicate that the current situation is not sufficiently stable to make coordination likely.³⁷⁶
- (313) In Slovenia, the motor fuel markets have been subject to partial price regulation until October 2020³⁷⁷ and then, again, after March 2022. However, beyond this price

³⁷¹ See Table 1.

³⁷² Maxen was rated by competitors as the most distant competitor of both MOL and OMV Slovenija (Non-confidential replies to questions 32 and 33 of Questionnaire 1 Retail Markets – Competitors in Slovenia). Moreover, based on the Parties’ internal documents, it appears that they consider Maxen’s fuel stations to be “poorly” located (filename: Market intelligence SLO – 2021 Q4.xlsx).

³⁷³ Non-confidential minutes of call with a competitor on 10 October 2022.

³⁷⁴ According to a competitor: “*Maxen prices are in general lower than the prices for filling stations on motorways but higher than competitors’ stations located off motorways*”, the reason being that “*Maxen’s rural filling stations are mostly isolated with not much competitors in the surrounding 30 km*” (Non-confidential minutes of the call with a competitor on 9 February 2022).

³⁷⁵ Presentation “Acquisition of OMV Slovenija by MOL” for the State of Play meeting, dated 7 June 2022, p. 4: “*Currently other players are not able to effectively exert competitive pressure in large scale*”.

³⁷⁶ Horizontal Merger Guidelines, paragraph 45.

³⁷⁷ The liberalization process started in 2016, when price regulation was first lifted for 100-octane gasoline and heating oil (at all fuel stations as of 12 April 2016). The regulation treated 100-octane gasoline as a single category as gasoline 98, therefore, as of 12 April 2016, no price regulation applied to gasoline 98. Thereafter, from 9 November 2016, highway stations were exempted from the regulation (meaning that no maximum price applied at highway stations either to main grade or premium products). Full

regulation, other conditions of supply and demand have remained relatively stable over the last years and no sudden or extreme alterations of these conditions can be reasonably predicted in the future.

- (314) Supply conditions have remained relatively stable, as demonstrated by several factors. First, market shares of the current suppliers have remained relatively stable over the last four years. MOL's share in the retail supply of motor fuels to B2C customers in non-DARS stations in Slovenia has changed only from 10.9% in 2018 to 10.8% in 2021 in terms of number of stations and from [10-20]% to [10-20]% in terms of volume. OMV Slovenija's market share has changed from 20.7% to 21.3% in terms of number of stations and from [30-40]% to [30-40]% in terms of volume. Petrol's market share has changed from 58.8% to 58.0% in terms of number of stations and [40-50]% to [40-50]% in terms of volume.³⁷⁸
- (315) Second, observing market expansion levels of the current players in the last 10 years, it can be seen that MOL is the only player to have significantly increased its network, mostly through the takeover of an existing network of 17 stations from ENI (Agip).³⁷⁹
- (316) Third, as detailed in recitals (175) to (186), no new players have entered the market in recent years and there have not been any new entrants who have successfully established themselves in the Slovenian market in the past decades. It is unlikely that any new players will enter the market in the near future due to the high barriers to entry and expansion. Current market players therefore have no reason to fear that any new entry may disrupt the market or undermine any attempts of coordination.
- (317) Fourth, as explained in recital (322), motor fuels are mature products, and with a low degree of innovation. The last products to be introduced in the market were premium diesel and gasoline. The Parties have no new products in the pipeline and no new products or innovations are expected to be introduced in the near future.
- (318) Demand conditions in the future can also be reasonably predicted. First, retail motor fuel demand is expected to decrease slowly in the market. In the long term, it may eventually be significantly reduced due to the efforts put in place by public administrations at Union and national level to phase out internal combustion engine vehicles, replacing them by low emission vehicles, in particular battery electric vehicles, which will not require gasoline or diesel.³⁸⁰
- (319) Second, as several studies show, demand for motor fuels – as is the case in general with energy products – is relatively inelastic, which means that pricing policies (e.g., higher taxes) but also a coordinated action by competitors resulting in price rises are likely to give rise to just a limited reduction in the demand of these goods.³⁸¹

liberalization was achieved only on 1 October 2020 when price regulation was lifted for all fuel stations and all motor fuels.

³⁷⁸ Commission's assessment based on Notifying Party's reply to RFI 1, Annex Q04b-d1. Non-DARS, B2C, all but trucks-only stations.

³⁷⁹ See recital (28).

³⁸⁰ For instance, to reach its climate neutrality goal by 2050, the EU is planning to take action to reduce emissions from cars as road transport accounts for one fifth of the EU's CO₂ emissions.

³⁸¹ See, for instance, "*High Frequency Evidence on the Demand for Gasoline*", by Laurence Levin, Matthew S. Lewis, and Frank A. Wolak, *American Economic Journal: Economic Policy* 2017, 9(3): 314–347; see also "*A meta-analysis on the price elasticity of energy demand*", by Xavier Labandeira, José M. Labeaga and Xiral López-Otero, Robert Schuman Centre for Advanced Studies, RSCAS 2016/25.

- (320) Finally, customers do not face significant switching costs nor do they have any relevant bargaining power, as explained in recitals (187)-(191).
- (321) The Parties refer to the current market circumstances, *i.e.*, price increases and fuel shortages, as a factor that would undermine coordination. The Commission disagrees with this argument. It is true that, in the past few years, prices of crude oil – and, as a derivative, motor fuel prices – have experienced a significant (and exceptional) rise. This increase was due to multiple factors, among others, the recovery of demand after the COVID-19 pandemic, supply issues, caused by the Russian war of aggression against Ukraine in early 2022, as well as decisions by the OPEC+ group to reduce crude oil supply.³⁸² This exceptional price increase has led to the reintroduction by Slovenia of price regulation in non-DARS stations (see recital (33)). In this context, the Commission may take into account future changes to the market to the extent that they can reasonably be predicted. In this case, precisely due to their exceptional nature, the current market circumstances cannot be taken as the appropriate benchmark to assess the future market evolution and cannot be considered as a feature of a permanent nature that would prevent or discourage firms from coordinating their behaviour in the market in the long term.³⁸³ In any case, the Commission notes that the high volatility of oil prices in recent years did not undermine the Parties' and other market players' ability to maintain the strong alignment of their prices during the liberalisation period until March 2022, as it will be explained in detail from recital (345).

C. Homogeneous and mature product with limited degree of differentiation, no innovations

- (322) Reaching terms of coordination is easier to achieve in markets where products are homogeneous.³⁸⁴ Product homogeneity reduces the number of parameters that need to be observed and makes it easier to compare prices, thereby facilitating the finding of a focal point for coordination. Moreover, in markets where innovation is important, coordination may be more difficult since innovations, particularly significant ones, may allow one firm to gain a major advantage over its rivals.³⁸⁵
- (323) In this case, the motor fuel markets are characterised by a relatively low level of innovation, with highly if not fully homogeneous products and a limited range of product offering by the different players, which makes their offer highly substitutable and their competitiveness dependant essentially of two factors: price and location of the fuel stations.
- (324) First, gasoline and diesel are fully homogeneous products, with no product differentiation. Motor fuels are standardised products that are freely substitutable. The market is therefore driven largely by price competition and product differentiation plays a limited role.³⁸⁶ Refined oil products are traded as a commodity, with prices at the wholesale market being referenced to the S&P's

³⁸² See, for instance, “*Energy price developments in and out of the COVID-19 pandemic – from commodity prices to consumer prices*”, by Friderike Kuik, Jakob Feveile Adolfsen, Eliza Magdalena Lis, Aidan Meyler, ECB Economic Bulletin, Issue 4/2022.

³⁸³ In fact, oil prices have again decreased and are currently at the lowest level of 2022, even lower than before the start of the Russian war of aggression against Ukraine (see, for instance, Why the price of oil has dropped despite new constraints on Russian supply | Financial Times (ft.com)).

³⁸⁴ Horizontal Merger Guidelines, paragraph 45.

³⁸⁵ Horizontal Merger Guidelines, paragraph 45.

³⁸⁶ Form CO, paragraphs 317 *et seq.*

“Platts” index.³⁸⁷ This means that the products of all suppliers are interchangeable and that, therefore, fuel retailers and ultimately end customers can source the product indistinctly from any supplier at their respective trade level which is capable of procuring the physical delivery of the product, irrespective of their characteristics or quality. This has been confirmed by the Parties³⁸⁸ and corroborated by the market investigation in Phase I, where respondents considered price as the most important competitive parameter of fuel products, whereas the product quality or characteristics were not identified by respondents as prominent competitive features.³⁸⁹ Prices remain the main parameter of competition and the main element driving consumers’ choice, despite the fact that price differences among fuel retailers are minimal, since the past and current price regulation has limited and still limits the possibility of fuel retailers to fiercely compete on prices.

- (325) Since there is a perfect or very high level of demand-side substitutability between the refined fuel products of the different competitors,³⁹⁰ comparison between market players is simple and easy as it is based essentially on price. The homogenous nature of the products therefore facilitates product comparison and is a key element enabling competitors to easily align their prices and adjust their commercial behaviour to each other.
- (326) Second, motor fuels are also not subject to a significant degree of innovation. In terms of new products, the offer of motor fuels in service stations has not changed in recent years. The only products introduced – and only very recently in Slovenia – are premium gasoline and diesel.³⁹¹ The product range available is therefore limited: each customer has the choice between only *two* types of motor fuels, main grade or premium. Premium gasoline and diesel were introduced countrywide by some retailers only after the full liberalisation of the market in October 2020.³⁹² Prior to that date, according to the Notifying Party, the margin limitations imposed by the regulation in force made it impossible to sell profitably premium products at non-DARS stations.³⁹³ As of today, demand of premium gasoline and diesel is still very limited in Slovenia, representing for MOL and OMV Slovenija in the liberalisation period³⁹⁴ less than 10% of the overall demand for gasoline and diesel in for B2C

³⁸⁷ S&P Platts is a price benchmark assessment for the oil industry by S&P Global Commodity Insights of the spot price of crude and refined oil products for the different hubs. Platts pricing plus a premium or minus a discount is a typical pricing mechanism on the spot market. Form CO, paragraphs 584 and 648. See also Commodity Price Assessments: Crude Oil, Natural Gas, Metals, Coal | S&P Global Commodity Insights (spglobal.com).

³⁸⁸ Form CO, paragraph 616.

³⁸⁹ Non-confidential replies to question 31 to Questionnaire 1 Retail Markets – Competitors in Slovenia and non-confidential replies to question 30 of Questionnaire 2 Retail Markets – Customers in Slovenia. Closeness of competition in this market is essentially based on price and location, see to this regard Form CO, paragraph 317: “*Product differentiation plays a limited role as there is limited customer loyalty, customers can and do switch to alternative suppliers frequently, primarily due to price and location (proximity)*”.

³⁹⁰ Form CO, paragraph 616.

³⁹¹ Premium gasoline is gasoline with a higher octane level (typically 100) than main grade gasoline. Premium diesel is diesel that contains more additives than main grade diesel to improve several characteristics of the fuel (increased engine performance, lower carbon emissions and easier start in cold weather conditions) (Form CO, footnote 251).

³⁹² Petrol, OMV Slovenija, MOL, Shell, Maxen, Logo, and Ecooil.

³⁹³ Form CO, paragraph 332 and 347. On 12 April 2016, price regulation was lifted in all fuel stations for 100-octane gasoline and heating oil only. From 9 November 2016, price regulation was lifted on all main grade and premium products on highway stations (Form CO, paragraphs 327 *et seq*).

³⁹⁴ From 1 October 2020 to 14 March 2022.

customers at non-DARS stations, although the profitability of these products is significantly higher.³⁹⁵ The offer of premium products by retailers typically targets very specific customers who focus on engine performance.³⁹⁶

D. High transparency

- (327) Transparency is a key element to enable the coordinating firms to reach a common understanding of the terms of coordination,³⁹⁷ as it allows firms to observe the prices and strategic behaviour of their competitors in order to be able to adjust their own decisions accordingly. Transparency is also important to enable the coordinating firms to monitor deviations from the coordinated behaviour.³⁹⁸ According to the General Court, “*price transparency is a fundamental factor in determining the level of market transparency where there is an oligopoly*”.³⁹⁹ Transparency also depends on the market structure: the lower the number of active participants in the market, the higher transparency will typically be.⁴⁰⁰
- (328) The Slovenian market for the retail supply of motor fuels to B2C customers at non-DARS stations is highly transparent. First because, as already explained starting from recital (306), it is an extremely concentrated market in which, post-Transaction, only two players – the new entity and Petrol – will need to observe each other in order to reach terms of coordination.
- (329) Second and most importantly, prices are made public almost in real time which allows competitors to closely monitor each other. Slovenian law requires that all prices be made public in real time for each point of sale. All retail fuel suppliers must provide their price changes for diesel main grade and premium, gasoline main grade and premium, heating oil and LPG per point of sale and *before* they are applied.⁴⁰¹ A dedicated website managed by the Ministry of Economic Development and Technology, goriva.si, enables consumers and other competitors to have access to the prices of each fuel station in real time.⁴⁰² Each retail fuel supplier is obliged to communicate any changes in its fuel prices of any station to goriva.si *prior to its implementation*. Price changes will then be published by goriva.si once they become effective.⁴⁰³ In practice, the fuel retailer reports a future price change for a given

³⁹⁵ The volume-weighted average daily unit margin of main grade diesel in B2C sales across stations in the liberalisation period was [...] for MOL and [...] for OMV Slovenija while for premium diesel was, respectively, [...] and [...]. The average margin of main grade gasoline on the same year in B2C sales was [...] for MOL and [...] for OMV Slovenija, while for premium gasoline it was [...] for MOL and [...] for OMV Slovenija (data on margins and volumes provided by the Notifying Party in reply to RFI 14).

³⁹⁶ [Details on the Target's sales policy and strategy regarding specific costumers in Slovenia] (see OMV internal document, filename: Research 2018 Country Report SI).

³⁹⁷ Horizontal Merger Guidelines, paragraph 47.

³⁹⁸ Horizontal Merger Guidelines, paragraph 49.

³⁹⁹ Case T-102/96 *Gencor v. Commission*, paragraph 227.

⁴⁰⁰ Horizontal Merger Guidelines, paragraph 49.

⁴⁰¹ “Order on information provided by the distributors of petroleum products and other taxpayers to the Ministry” (the ‘Order’), see Official Gazette, No. 73/21, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE2662>.

⁴⁰² The goriva.si application seems to be widespread and popular among the general public. According to the Notifying Party, the number of regular users of this application is likely to be high. The number of visits received by MOL on this website was around or higher than 100,000 in each of in the first six months of 2002, with peaks of more than 500,000 visits in the month of March 2022: 98,213 visits in January 2022, 146,571 in February, 533,550 in March, 116,419 in April, 214,249 in May and 150,390 in June (Notifying Party’s reply to RFI 15).

⁴⁰³ Form CO, paragraphs 361 and following. See Section 3(1) of the Order: “*Any change in retail prices is entered by the company into the web application, before at the point of sale it is applied in one of the*

product and in a specific station, indicating as of which date and time the price change will be effective. According to the Notifying Party, shortly after this date and time, the price will be available to the general public at the website interface.⁴⁰⁴

- (330) The ability of market players to monitor each other almost in real time has been confirmed by the market investigation. Several competitors indicated that the application goriva.si is the main tool used by market players to monitor prices of competitors.⁴⁰⁵ One competitor indicated that price adjustments can be checked on goriva.si by other competitors and customers “*within minutes*”.⁴⁰⁶ In the same line, the Slovenian Consumers’ Association was of the view that the market is “*very transparent and players react immediately – within hours – to each other*”.⁴⁰⁷ Generally, the large majority of the competitors confirmed that the Slovenian market is so transparent that, as soon as a price change occurs, the rest of the market becomes aware of it shortly thereafter.⁴⁰⁸ In short, market players have immediate access to each other’s price changes, which enables them to react accordingly with accuracy and immediacy. This same idea is included in the 2021 sector inquiry, where the SCPA noted that the goriva.si website allows market players to quickly react and adjust very rapidly their prices to the price set by the first mover.⁴⁰⁹ Specifically, after analysing the price changes published on goriva.si during the period of liberalisation, the SCPA concluded that fuel suppliers in Slovenia were frequently changing their prices on the same day.
- (331) In addition to the official goriva.si website, the transparency of the Slovenian motor fuel markets is illustrated by the presence of other websites and applications which provide detailed information on motor fuel prices in Slovenia, such as AMZS,⁴¹⁰ Natanja,⁴¹¹ or Waze.⁴¹²

7.2.1.4.3.1.3. The past behaviour by MOL, OMV Slovenija and Petrol during the liberalisation period reflects their ability to coordinate

- (332) In assessing the likelihood of coordinated effects, the Commission takes into account all available relevant information on the characteristics of the markets concerned, not only structural features, but also the past behaviour of firms.⁴¹³ This Section examines the price behaviour that MOL, OMV Slovenija and Petrol followed during

following ways: - using the application programming interface, - by filling in the online form” (translated by Notifying Party).

⁴⁰⁴ Notifying Party’s reply to RFI 17, question 1.

⁴⁰⁵ Non-confidential reply to question 16 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁴⁰⁶ Non-confidential minutes of call with a competitor on 20 July 2022.

⁴⁰⁷ Non-confidential minutes of call with a consumers’ association on 13 September 22.

⁴⁰⁸ Non-confidential reply to question 16 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁴⁰⁹ 2021 sector inquiry, section 4.5 and section 4.8.2.

⁴¹⁰ AMZS (www.amzs.si) is the largest provider of road assistance in Slovenia. It encompasses one hundred automobile clubs and touring clubs throughout Slovenia, which together total more than 82,000 members. AMZS has an application containing motor fuel prices at station level on the Slovenian territory, with information being also available for fuel prices in neighbouring countries. The Notifying Party considers that this application is also likely to have a large user base (see reply to RFI 15).

⁴¹¹ The application and website www.natankaj.si, which is part of the larger platform, Gorenjc, also monitors prices of a variety of products, showing where customers can buy for the best price a particular product. Within this application, the customer can also find information about the fuel prices on service stations in the Slovenian market on a station-by-station basis (see reply to RFI 15).

⁴¹² According to the Notifying Party, there are a number of global mobile applications, such as Waze, which provide information on fuel station prices in Slovenia on the basis of the updates introduced by users (see Notifying Party’s reply to RFI 15).

⁴¹³ Horizontal Merger Guidelines, paragraph 43.

the liberalisation period in non-DARS stations, as it was the only period in which the market players were in the position to set freely their prices in non-DARS stations and develop pricing strategies. At the outset, the Commission clarifies that the evidence available concerning the price behaviour of the Parties and other competitors is limited given the very short timeframe in which prices were liberalised (between October 2020 and March 2022). The Commission is therefore not in a position to conclude whether MOL, OMV Slovenija and Petrol coordinated their commercial behaviour prior to the Transaction. However, the analysis of their pricing behaviour of the main market players during this period illustrates the *ability* of MOL and Petrol to coordinate their behaviour post-Transaction and the way this coordination could take place.

- (333) The following Sections address several aspects of the price behaviour of the main players in the Slovenian market for the retail supply of motor fuels to B2C customers in non-DARS stations. Section ‘A. Limited price points’ (from recital (334)) addresses the existence of a very limited number of price points in the market. Section ‘B. Limited price changes’ (from recital (338)) deals with the very limited number of price changes that main market players carried out during this period. Section ‘C. Simple and predictable pricing structure’ (from recital (344)) briefly discusses the simple and predictable structure of motor fuel retail prices and examines the price strategies put in place by Petrol, OMV Slovenija and MOL during the liberalisation period. Section ‘D. Strong price alignment with price as focal point’ (from recital (345)) explains how these factors resulted in a strong alignment of the prices of Petrol, OMV Slovenija and MOL, using totem prices as the focal point. Finally, ‘E. Margin evolution during the liberalisation period’ (from recital (354)) addresses the evolution of the margins of MOL and OMV Slovenija during this period.

A. Limited price points

- (334) As already discussed in recital (83), the market investigation has shown that most fuel retail suppliers in Slovenia apply only two totem prices for their main grade products: one in DARS stations and one in non-DARS stations. This is a characteristic feature of the Slovenian market, which distinguishes it from other Union markets, where prices often differ locally,⁴¹⁴ with the result of multiple price points, thus rendering monitoring somewhat more complex and often decentralised.
- (335) MOL’s price setting process in Slovenia is [details on MOL’s pricing policy in Slovenia].⁴¹⁵ Petrol also applies one price list for all its non-DARS stations.⁴¹⁶ All other competitors also have a national price that applies to all their stations in Slovenia.⁴¹⁷
- (336) [Details on the Target’s pricing policy in Slovenia];⁴¹⁸ [Details on the Target’s pricing policy in Slovenia];⁴¹⁹ [details on the Target’s pricing policy in Slovenia];⁴²⁰ [Details on the Target’s pricing policy in Slovenia].⁴²¹

⁴¹⁴ For example, Croatia, Germany, Hungary, or Denmark.

⁴¹⁵ Form CO, paragraphs 335-338.

⁴¹⁶ Non-confidential minutes of call with a competitor on 25 January 2022.

⁴¹⁷ Non-confidential reply to question 19 of Questionnaire 1 Retail Markets – Competitors in Slovenia. Only MOL, OMV Slovenija and Petrol have DARS stations.

⁴¹⁸ [Details on the Target’s pricing policy in Slovenia] (Form CO, paragraph 357).

⁴¹⁹ [Details on the Target’s pricing policy in Slovenia] (Form CO, paragraph 357).

(337) In conclusion, monitoring competitors' prices in the Slovenian market for the retail sale of motor fuels to B2C customers at non-DARS fuel stations seems to be particularly easy, as the number of price points to observe are extremely limited: all market players apply *one* single price to all their non-DARS stations, with the exception of OMV Slovenija, which, during the limited period of liberalisation, applied multiple price-points in specific non-DARS stations.

B. Limited price changes

(338) On top of having limited price points, motor fuel players in Slovenia are also particularly unsophisticated as regards price changing. Contrary to other markets, where prices change on a daily basis or even several times per day, in Slovenia prices change once or, maximum, twice per week.

(339) The price of acquisition of motor fuels in the upstream ex-refinery or wholesale market is the main cost item for retailers. This means that price changes in the retail market typically follow variations in the wholesale market. As wholesale prices generally change on Monday or Tuesday, Petrol, MOL and OMV Slovenija change their prices for DARS and non-DARS stations mostly between Monday night and Wednesday.⁴²² Besides these regular changes, since both MOL and OMV Slovenija regularly monitor prices of competitors, they can occasionally change prices on other days whenever they consider their prices not to be competitive.⁴²³

(340) MOL's internal documents confirm the limited number of price changes applied in Slovenia, and how this compares with other countries in the region where prices change more frequently, sometimes even daily (see Figure 6).⁴²⁴

Figure 6: Frequency of price changes in Slovenia and other countries in the region

[Details on MOL's pricing policy in Slovenia and in the region.]

Source: MOL internal document.⁴²⁵

(341) The Commission's analysis of the price data published on goriva.si confirms the following: (i) most of the weeks during the liberalisation period (from October 2020 to March 2022) MOL, OMV Slovenija and Petrol changed their prices only once per week;⁴²⁶ and (ii) MOL, OMV Slovenija and Petrol changed their prices between

⁴²⁰ [Details on the Target's pricing policy in Slovenia] (see OMV Slovenija's reply to RFI 15). [Details on the Target's pricing policy in Slovenia].

⁴²¹ Form CO, paragraph 371. [Details on the Target's pricing policy in Slovenia] (the same mentioned above in footnote 415).

⁴²² Form CO, paragraphs 339 and 351. See non-confidential minutes of call with a competitor on 25 January 2022. In the case of MOL and Petrol, regular price changes can happen on Saturdays as well, although not on all weekends (Form CO, paragraphs 339, and non-confidential minutes of call with a competitor on 25 January 2022).

⁴²³ Form CO, paragraphs 339 and 351, 352.

⁴²⁴ This has also been confirmed in past cases, for instance, in Case M.7603 – *Statoil Fuel and Retail/Danks Fuels*.

⁴²⁵ The table seems to reflect the situation prior to the liberalisation, when price changes took place once every two weeks. However, other internal documents point out to weekly price changes during the liberalisation period, for instance, MOL internal document (filename: HEAD OF RETAIL CALL Agenda – Slovenia).

⁴²⁶ Data extracted from goriva.si provided by the Notifying Party in its reply to RFI 17; the analysis considers price changes of non-DARS, non-highway regular stations aligned with the "national price".

Monday and Wednesday (MOL mostly on Tuesdays and Wednesdays; OMV Slovenija and Petrol mostly on Mondays and Tuesdays).⁴²⁷

- (342) Limited price changes render monitoring and price alignment even easier since it is relatively simple to anticipate competitors' movements. This is expressly acknowledged in some of MOL's internal documents: "*Due to limited number of market price changes, the general price levels are known by the majority of customers*".⁴²⁸
- (343) In sum, pricing in the Slovenian market for the retail supply of motor fuels to B2C customers at non-DARS fuel stations is rather simple: with very limited price points (each market player, except for OMV Slovenija, applied the same price for all the territory) and limited price changes (generally, one weekly update).

C. Simple and predictable pricing structure

- (344) The pricing structure of motor fuel prices at retail level is also relatively simple. The main item cost, which determines to a great extent the final price to the customer, is the wholesale level price, which is a commoditised price typically set by reference to the Platts index (and the dollar-euro exchange rate) and therefore its variations and overall amount can be easily predicted by other competitors. Taxes and duties (excise duties, CO2 tax, energy saving tax, VAT, etc.), which represent around 50% of the final price (the rest being logistic costs, overheads and margins), are fixed by the Slovenian government and are also common to all retailers.⁴²⁹ The price structure is therefore relatively simple and largely common to most competitors. This makes prices easily comparable and even predictable, especially in a context of market stability. As one competitor puts it: "*[...] does not need to check Petrol's prices before adjusting its own: since the difference between wholesale and retail prices is the same and Petrol applies always the same formula to set its retail price, can anticipate, based on the wholesale price, what Petrol's prices will roughly be*".⁴³⁰

D. Strong price alignment with price as focal point

- (345) Under the regulation in place prior to the full liberalisation period (*i.e.*, until September 2020),⁴³¹ prices of main grade fuels were fixed according to a formula which recognised certain costs (for instance wholesale quotation prices) and allowed for a limited margin on top of those costs.⁴³² However, that formula did not recognise certain other costs (essentially, the increased obligation of bio components in diesel). This means that these costs could not be passed onto the final consumers and in practice reduced the retailers' margin. The short period of liberalisation allowed fuel

⁴²⁷ Data extracted from goriva.si provided by the Notifying Party in its reply to RFI 17; the analysis considers price changes of non-DARS, non-highway regular stations aligned with the "national price".

⁴²⁸ *RETAIL Strategy working document.pptx*, 24 August 2020.

⁴²⁹ Form CO, Table 14.

⁴³⁰ Non-confidential minutes of the call with a competitor of 5 July 2022.

⁴³¹ The liberalization process started in 2016, when price regulation was first lifted for 100-octane gasoline and heating oil (at all fuel stations as of 12 April 2016). The regulation treated 100-octane gasoline as a single category as gasoline 98, therefore, as of 12 April 2016, no price regulation applied to gasoline 98. Thereafter, from 9 November 2016, highway stations were exempted from the regulation (meaning that no maximum price applied at highway stations either to maingrade or premium products). Full liberalization was achieved only on 1 October 2020 when price regulation was lifted for all fuel stations and all motor fuels.

⁴³² 8.16 EURO cent margin for diesel and an 8.70 EURO cent for gasoline. See Section 11 of Government Decree published in Official Gazette nr. 71/14 on 30.10.2014 and section 12 of Government Decree published in Official Gazette nr. 39/20 on 30.03.2020. See Form CO, paragraph 329.

retailers to fix freely their end prices. This permitted the introduction of premium products, which could not be profitably sold during the period of price regulation, as the price formula did not contemplate the cost of purchase of the premium products. In the initial period of the liberalisation, market players did not develop any sophisticated or complex pricing strategy. Rather, they followed a very simple pricing strategy: they essentially continued applying the same formula which had been in force during the price-regulation period for main grade products but increasing slightly the prices to account for the biofuel costs which were not recognised by the formula set by the Slovenian Government during the price regulation period. This increase allowed market players to pass on these costs to consumers and thus increase its margins in the same amount.⁴³³ Market players would therefore update weekly their prices applying the formula (with the margin increase), in line with the changes in the wholesale market. Petrol and OMV Slovenija, as the largest players, were updating their prices on Mondays or Tuesdays (Wednesday morning at the latest), while the rest would typically follow with price changes shortly after.⁴³⁴ The effect of this simple strategy is, as will be analysed in the following paragraphs, that their respective prices maintained a very strong alignment.

- (346) This pricing strategy has been confirmed by different market players. MOL stated that [details on MOL's pricing policy in Slovenia].⁴³⁵ Another competitor confirmed this common strategy, and added that the price was increased beyond the formula to include additional costs: *“During the liberalization period, all distributors in Slovenia still applied roughly the price formula set by the law during the price regulation period, they only increased slightly the price to account for the biofuel cost”*.⁴³⁶ [Details on MOL's pricing policy and strategic decisions about price setting in Slovenia]: *“[details on MOL's pricing policy and strategic decisions about price*

⁴³³ Form CO, paragraph 360. For instance, the increased obligation of bio components in diesel (Form CO, paragraph 329). As these additional costs were not recognised by the formula set up by the Slovenian government, the amount of these costs which retailers had to bear in practice reduced their margin.

⁴³⁴ The evidence available to the Commission does not allow to identify a clear price leader. The main competitors of the Parties confirmed that they generally follow the prices of one player, but both Petrol or OMV Slovenija – as the largest players – were mentioned as market leaders (see non-confidential replies to question 15 of Questionnaire 8 Retail Markets – Competitors in Slovenia). [Details on the Parties' strategic decisions about price setting in Slovenia]: [confidential details on the Parties' strategic decisions about price setting in Slovenia]. [Details on Target's strategic decisions about price setting in Slovenia]. Some competitors indicated that, in their view, the market follows Petrol *“The Slovenian retail market follows Petrol's prices. [...] If Petrol adjusts its prices, usually on Monday or Tuesday, [...] does as well”* (Non-confidential minutes of call with one competitor of 5 July 2022); *“The market follows Petrol and operators adjust their prices following Petrol's decisions. Petrol's price adjustments can be checked on goriva within minutes. [...] [...] checks Petrol's prices and changes its prices the day after”* (Non-confidential minutes of call with a competitor of 20 July 2022). The pricing data available on goriva.si does not reveal any obvious pattern of price leadership/price followership by Petrol or by OMV Slovenija: depending on the week, both Petrol and OMV Slovenija appear as first movers, with OMV Slovenija most frequently updating its prices on Monday and Petrol on Tuesdays (which would suggest OMV Slovenija is more often first mover). On the other hand, OMV Slovenija and MOL change their prices more often than Petrol (see footnote 425) (which suggests Petrol does not react to OMV Slovenija's and MOL's price changes) (see *Goriva data extracted from goriva.si and provided in reply to RFI 17 submitted by the Notifying Party on 3 August 2022*; the analysis considers price changes of non-DARS, non-highway regular stations aligned with the “national price”).

⁴³⁵ Notifying Party's reply to RFI 17.

⁴³⁶ Non-confidential minutes of call with a competitor of 5 July 2022.

setting in Slovenia]”: “[*details on MOL's pricing policy and strategic decisions about price setting in Slovenia*]”.⁴³⁷

- (347) This strategy facilitated the alignment of prices between competitors. Moreover, as prices were fully transparent – since they were published almost in real time in goriva.si – market players could easily monitor each other’s prices. Market players would thus monitor whether their prices – following the weekly updates applying the ‘Formula +’ strategy – would be aligned, and on the rare occasions in which they were not, they would react quickly making a further price adjustment later in the week. [Details on Parties' pricing policy and strategic decisions about price setting in Slovenia]⁴³⁸ [Details on Parties' pricing policy and strategic decisions about price setting in Slovenia].⁴³⁹ MOL’s internal documents reflect this policy [details on MOL's policy about price setting in Slovenia].

Figure 7: [MOL’s policy about price setting in Slovenia]

[MOL’s policy about price setting in Slovenia]

Source: MOL internal document.

- (348) [Details on MOL's policy about price setting in Slovenia].⁴⁴⁰ [Details on MOL's policy about price setting in Slovenia].

Figure 8: MOL’s pricing policy

[Details on MOL's policy about price setting in Slovenia]

Source: MOL internal document.

- (349) Figure 9 shows MOL’s internal instructions on how to update prices weekly [on MOL's strategy about price setting in Slovenia].

Figure 9: MOL’s pricing position

[details on MOL's strategy about price setting in Slovenia]

Source: MOL internal document.⁴⁴¹

- (350) Figure 10 is an example of an *ex-post* price adjustment for main grade gasoline (95 octanes) made by MOL in the course of 2021. [Details on MOL's strategy about price setting in Slovenia].

Figure 10: MOL’s price adjustment

[Details on MOL's strategy about price setting in Slovenia.]

Source: Form CO, Annex 30.

- (351) The evidence available shows how the high degree of transparency in the market, the daily price monitoring by the top three players, and the simple pricing strategies put in place, allowed them to align their commercial behaviour during the period of liberalisation, using totem prices as the focal point for that alignment. Furthermore,

⁴³⁷ Email of 14 October 2020 “*Fuel Prices - latest update 14.10.2020, premium diesel*”. In the same line, email of 6 October 2020 “*Prices*”.

⁴³⁸ For MOL, see Form CO, paragraphs 335 *et seq*, and, in particular, paragraph 341. For OMV Slovenija, see Form CO, paragraphs 352 -355.

⁴³⁹ Form CO, paragraphs 339 and 352.

⁴⁴⁰ Form CO, paragraph 343: “[*details on MOL's policy about price setting in Slovenia*]”. Consistently with this, OMV Slovenija indicates that although its pricing policy can vary over time its “[*details on the Target's policy about price setting in Slovenia*]” (Form CO, paragraph 354).

⁴⁴¹ MOL internal document (file name: RE: HEAD OF RETAIL CALL Agenda – Slovenia).

as will be seen in Section E. ‘Margin evolution during the liberalisation period’ (from recital (354)), the Parties’ margins increased during this period.

- (352) As discussed in detail in recitals (327) to (331), the pricing data published on goriva.si provided by the Parties shows that, during the liberalisation period, the totem prices applied by Petrol, MOL and OMV Slovenija remained essentially identical, with negligible differences between them and with identical or very similar price changes. As Table 8 reflects, the average (absolute) difference in the prices of main grade products applied by the three larger market players during the liberalisation period remained ostensibly below EUR 1 cent and even below EUR 0.5 cent.

Table 8: Average price difference for diesel and gasoline main grade during the liberalisation period

	Average absolute value of daily average price difference [EUR/l]		
Fuel type	<i>between MOL and OMV</i>	<i>between OMV and Petrol</i>	<i>between MOL and Petrol</i>
diesel main grade	0.004	0.004	0.003
gasoline main grade 95	0.004	0.004	0.004

Source: Commission assessment based on Goriva data extracted from goriva.si and provided in reply to RFI 17 submitted by the Notifying Party on 3 August 2022. Non-DARS, B2C, all but trucks-only stations.

- (353) In short, the evidence available to the Commission shows clearly how the characteristics of the market allowed MOL, OMV Slovenija and Petrol to keep their totem prices strongly aligned during the entire period of liberalisation.

E. Margin evolution during the liberalisation period

- (354) As the Parties submit, due to the prolonged price regulation in Slovenia, retail prices net of taxes and, most importantly, margins, seemed to remain significantly below the levels in other neighbouring countries. The lower level of margins in Slovenia was acknowledged by the SCPA and was identified as one of the main barriers to enter the Slovenian market by the authority⁴⁴² and also during the market investigation.⁴⁴³ The relatively low level of margins in Slovenia can be observed in Figure 11 and Figure 12 which reflect how MOL’s and OMV Slovenija’s net margins in the period between January 2018 and October 2021 were consistently lower or even significantly lower in Slovenia than in most other neighbouring countries where they operate.

Figure 11: MOL’s net margins for diesel main grade (left) and gasoline main grade (right) in Slovenia and Croatia

[Details on MOL’s margins for diesel main grade in Slovenia and Croatia.]

[Details on MOL’s margins for gasoline main grade in Slovenia and Croatia.]

Source: Commission analysis based on data provided by the Parties in their reply to RFI 14; the analysis considers B2C totem prices and unit margins on non-DARS, non-highway regular stations. It provides B2C volume weighted average daily prices across stations.

** Margin per litre is defined for MOL in Slovenia as (revenues – COGS – logistic costs – discounts)/volumes sold. Margin per litre is directly extracted from INA’s internal systems for INA and Tifon. Margin per litre is defined as the net sales price minus the Cost Of Goods Sold (weighted average cost) for Tifon.*

⁴⁴² SCPA’s Annual Report for 2015, Section 5.4.

⁴⁴³ See non-confidential replies to question 51 of Questionnaire 1 Retail Markets – Competitors in Slovenia, where low margins was the barrier to entry most mentioned by competitors, after regulatory barriers (permits and authorisations).

As explained by the Notifying Party in Form CO, Annex 26: y, the Croatian government put in place a price cap in mid-October 2021 which lasted two months and has been reinstated early February 2022.

Figure 12: OMV's net margins for diesel main grade (left) and gasoline main grade (right) in Slovenia and nearby Member States

[Details on the Target's margins for diesel main grade and gasoline main grade in Slovenia and nearby Member States]

Source: Form CO, Annex 26. Data from MOL (Annex 26.1 to the Form CO, tab "OMV VM MS (monthly)"). Analysis by Positive Competition. Depending on the Member States, OMV Group can have several entities, amongst which a discount retail network, "EuroTruck", "OMV" or "Petro". The graphs display net margins of "OMV".

- (355) The Commission has also analysed the evolution of margins of the Parties during the liberalisation period and it has observed how these margins grew considerably. Moreover, the expectation of the Parties is that margins would continue to increase post-Transaction.
- (356) As already indicated in the Article 6(1)(c) Decision, the Parties, the SCPA, and different market players indicated during the Phase I investigation that margins in Slovenia were low compared to those of other Member States, and that, once the price intervention would be lifted, margins in the Slovenian retail market are expected to increase.⁴⁴⁴ [Details on the Target's assessment on the margins in Slovenia].⁴⁴⁵
- (357) The internal documents provided by MOL during the market investigation confirm [Details on MOL's business plans regarding the evolution of margins in Slovenia].
- (358) Figure 13 shows a presentation prepared by MOL in April 2021 [details on MOL's margins calculations of main grade gasoline and diesel business plans, strategic decisions regarding the Transaction].

Figure 13: Price and margin targets, 2021

[Details on MOL's margin calculations and business plans in Slovenia.]

*Source: MOL internal document.*⁴⁴⁶

- (359) Figure 14 shows the main key performance indicators (KPIs) of MOL for the Slovenian market in 2022. The graphs show that [details on MOL's margin calculations and business plans in Slovenia].

Figure 14: Financial KPIs and fuel performance, 2022

[Details on MOL's margins and business plans in Slovenia.]

*Source: MOL internal document.*⁴⁴⁷

- (360) [Details on MOL's margin calculations and business plans regarding the Transaction].⁴⁴⁸ [Details on MOL's margin calculations and business plans regarding the Transaction].⁴⁴⁹

⁴⁴⁴ Article 6(1)(c) Decision, paragraph 189.

⁴⁴⁵ Form CO, Annex 9.17.3. See also: Financial Vendor DDR (April 2021), p. 59, provided as Form CO, Annex 9.17.1. Information Memorandum prepared by UniCredit (April 2021), pages 11, 13, 19 "[details on the Target's margins calculations for premium fuels and business plans in Slovenia]" (page 11) and "[details on the Target's margins calculations for premium fuels and business plans in Slovenia]" (page 13).

⁴⁴⁶ MOL internal document (filename: SLO Fuel_MonthlyPerformance_202104_SLO.pptx).

⁴⁴⁷ MOL internal document (filename: Business review template_BP2022_after BR.pptx).

⁴⁴⁸ MOL internal document (filename: RE: Triglav model input data - FUEL UNIT MARGIN REVISED).

- (361) [Details on MOL's, margin calculations for main grade and premium fuels in Slovenia].

Figure 15: Performance January- August 2021

[Details on MOL's, margins for main grade and premium fuels in Slovenia]

Source: MOL internal document.⁴⁵⁰

- (362) The margin data provided by the Parties confirms that, during the short period of full liberalisation (October 2020 – March 2022), the overall unit margin of MOL and OMV Slovenija increased [details on the Parties' margins in Slovenia]. As shown in Figure 9 and Figure 10, unit margins (*i.e.*, margin per litre sold in prices) [details on the Parties' margins in Slovenia]: MOL's margins in main grade products, in particular, grew by [...] % for diesel and by [...] % for gasoline. OMV Slovenija's margin growth, [details on the Target's margins in Slovenia],⁴⁵¹ was also [details on the Target's margins in Slovenia], [details on the Parties' margins for premium products in Slovenia]. This increase in unit margins shows that the increase in Slovenian prices cannot be explained entirely, as the Notifying Party seems to suggest, by the increase in the price of crude oil in the international markets or by 'common trends'.⁴⁵²
- (363) The above seems to indicate that, during the period of liberalisation, the Parties and Petrol were already able to coordinate prices pre-Transaction. The possible impact of the very specific features of this market on the Parties' unit margin increases taking place between October 2020 and March 2022 cannot, however, be entirely excluded. In the case at hand, the Slovenian market was subject to price regulation for a long time period, followed by a very short period of liberalisation. In such an exceptional case, a margin increase might also potentially be at least partially inherent in the functioning of economics.
- (364) In order to conclude that a merger may significantly impede effective competition on the market as a result of coordinated effects, the Commission is not, in any case, required to demonstrate that firms were already coordinating before the merger. It is sufficient to show that the merger increases the likelihood that firms are able to coordinate their behaviour.
- (365) The market structure is in the present case already conducive to price alignments among the relevant players active in the market. Price alignments may have occurred already in the market during the limited period of liberalisation, when the Parties and Petrol managed to successfully align in a perfect way, increase their totem process and increase unit margins. In any case, the Transaction would directly increase the ability to reach terms of coordination, notably by further reducing the number of

⁴⁴⁹ MOL internal document (filename: Project_Triglav_CEC_v02.pptx). See also Annex 9.1

⁴⁵⁰ MOL internal document (filename: Business review template_BP2022.pptx).

⁴⁵¹ MOL's and OMV Slovenija's margins cannot be directly compared as they have been calculated differently, as inferred from the Parties reply to RFI 14. On the one hand, MOL appear to calculate the net unit margin per litre as follows: [details on MOL's margin calculation method in Slovenia]. On the other hand, OMV appears to calculate net unit margin per litre as follows: [details on the Target's margin calculation method in Slovenia].

⁴⁵² Form CO, Annex 26. The same conclusion was reached by the Slovenian NCA in its 2022 sector inquiry: "At the same time, the Agency observed that most bidders increased their margins after deregulation and therefore the increase in fuel prices was influenced not only by the purchase price, which naturally represents the largest part of the fuel price, but also by the possibility of pricing at higher prices, which was limited before deregulation" (see 2022 sector inquiry, section 5, translation by the Commission).

market players, by removing an important competitive constraint, increasing symmetry and transparency in the market, and thus not only altering the market structure making the reaching of terms of coordination easier, but also further simplifying the ability to monitor prices. Therefore, these market features and the evidence of strongly aligned prices suggest that, post-Transaction, the Parties and Petrol might be able to coordinate their behaviour, provided that the conditions for coordination to be sustainable are met.

7.2.1.4.3.1.4. Conclusion on ability to reach terms of coordination

- (366) On the basis of the evidence set out above, the Commission concludes that reaching terms of coordination would likely be possible after the Transaction. In particular, the characteristics of the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations (namely its extremely concentrated nature, homogeneous and mature products, relatively stable environment and high transparency which facilitates the comparison of totem prices) are conducive to the new entity and Petrol being able to reach terms of coordination post-Transaction. This is further corroborated by the past behaviour of the Parties and Petrol, which illustrates how these entities, during the short period of liberalisation, managed to successfully align in a perfect way and increase their totem prices and to increase also unit margins (although such alignment did not necessarily result in a stable coordination).

7.2.1.4.4. Sustainability of coordination

7.2.1.4.4.1. Monitoring deviations

- (367) Coordination is not sustainable unless the consequences of deviation from the terms of tacit coordination are perceived to be sufficiently severe to convince coordinating firms that it is in their interest to abide by such terms. Sufficient market transparency is required to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating.⁴⁵³
- (368) In the present case, the high degree of transparency resulting from specific market conditions, described above in recitals (327) to (331), would allow the competitors to detect deviations from the artificially-set price (resulting from coordination) in a timely fashion. This would constitute an effective means to monitor whether competing fuel retailers adhere to the terms of coordination. Competitors are able to detect deviations, which would typically consist in a relative price decrease with the objective to gain market share, and react rapidly.
- (369) As outlined in recital (311), pursuant to Slovenian law, price changes, that fuel retailers intend to apply for diesel main grade and premium, gasoline main grade and premium, heating oil and LPG, are provided to the Ministry of Economic Development and Technology, managing goriva.si, before their actual application. These price changes are made public on goriva.si once they become effective. This system allows other fuel retailers in the market to have access to the prices of each service station in real time.⁴⁵⁴
- (370) As set out in recital (330), the market players' ability to monitor each other has been widely confirmed by the market investigation. Almost all competitors in the market indicated that the Slovenian market is so transparent that, as soon as a price change

⁴⁵³ Horizontal Merger Guidelines, paragraphs 49-51.

⁴⁵⁴ Form CO, paragraphs 361 *et seq.*

occurs, the rest of the market becomes aware of it shortly thereafter.⁴⁵⁵ In this respect, a consumers' association indicates that *"the market is very transparent and players react immediately – within hours – to each other. [...] When Petrol sets a new price, all the others align their prices immediately."*⁴⁵⁶ The same competitors who responded to the market investigation observe that the main tool to compare prices in Slovenia is the website goriva.si.⁴⁵⁷

- (371) Considering that competitors have this extensive access to each other's prices, frequent and regular tracking of prices becomes a natural consequence inherent in the functioning of the market. Both the market investigation results and the Parties' internal documents provide sufficient evidence of regular price tracking mainly between the Parties and Petrol.
- (372) For instance, the majority of competitors indicated that the Parties and Petrol's prices are similar and the remaining competitors in the market set their prices similarly to them, therefore suggesting that tracking competitors and comparing each other's prices is a regular activity in the market, being also quite easy and rapid, and the few remaining competitors tend to track the main three players and adjust their prices according to them, *i.e.*, MOL, OMV Slovenija, and Petrol.⁴⁵⁸ This is confirmed, for example, by one small competitor: *"OMV sold motor fuel at a slightly higher price than Petrol; MOL was more or less following OMV prices and sometimes underpricing them. [...] Generally, Petrol had slightly lower prices at their service stations. The differences, however, were not very high, but in the range of 1 cent."*⁴⁵⁹
- (373) While the few smaller remaining players in the market seem to monitor the prices set by the three biggest players – MOL, OMV Slovenija, and Petrol – the Parties' internal documents show that [details on MOL's pricing policy in Slovenia for main grade and premium products].

Figure 16: MOL's pricing strategy in Slovenia

[Details on MOL's pricing policy in Slovenia for main grade and premium products.]

Source: MOL internal document.⁴⁶⁰

- (374) Another example is shown in Figure 17, based on which the Commission notes that [details on MOL's pricing policy in Slovenia]:

Figure 17: MOL's pricing strategy in Slovenia in comparison with OMV Slovenija and Petrol

[Details on MOL's pricing strategy in Slovenia.]

Source: MOL internal document.⁴⁶¹

- (375) Similarly, the Commission identified a number of OMV Slovenija's internal documents suggesting that [details on the Target's pricing strategy in Slovenia].⁴⁶²

⁴⁵⁵ Non-confidential replies to question 16 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁴⁵⁶ Non-confidential minutes of call with a consumers' association on 13 September 2022.

⁴⁵⁷ Non-confidential replies to question 16.1 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁴⁵⁸ Non-confidential replies to question 14 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁴⁵⁹ Non-confidential minutes of call with a competitor on 13 July 2022.

⁴⁶⁰ MOL internal document (filename: SLO FUEL Pricing Process Action List 2021 Q1_4_5_2021.pptx).

⁴⁶¹ MOL internal document (filename: Retail VP ReportSLO_October 2020_YE FC.pptx).

⁴⁶² Figure 18 is an excerpt from an email exchange in Slovenian within OMV. See courtesy translation in English: "3. SUPER 100: [details on the Target's pricing strategy in Slovenia]"

Figure 18: OMV Slovenija's pricing strategy in Slovenia

[Details on the Target's pricing strategy in Slovenia.]

Source: OMV Slovenija internal document.⁴⁶³

- (376) Based on the evidence set out above and the market characteristics as detailed in Section 8.3.2. above, it is apparent that the Slovenian market for retail supply of motor fuel in the B2C segment is so transparent that the Parties have in the past monitored and keep monitoring each other's prices and Petrol's prices. These market features make monitoring competitors' prices and any plausible deviation from tacitly colluded prices particularly easy.

7.2.1.4.4.2. Deterrent mechanisms

- (377) The ability to retaliate promptly and effectively against deviating firms is key for the sustainability of price coordination. Without the threat of retaliation, firms have an incentive to reduce prices from the artificial, coordinated price level and profitably increase volumes and market share. Therefore, coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination. Such a threat is only credible if, where deviation by one of the firms is detected, there is sufficient certainty that some deterrent mechanism will be activated,⁴⁶⁴ and if such deterrence is timely.⁴⁶⁵ The deterrence by way of a price war may entail a short-term economic loss for the retaliating firms. This does not necessarily remove the incentives for retaliation since the short-term loss may be smaller than the long-term benefit of retaliating resulting from the return to the regime of coordination.⁴⁶⁶ Retaliation does not necessarily need to take place in the same market as where the deviation occurred. If the coordinating firms have commercial interactions in other markets, such product or geographic symmetry may offer alternative opportunities for retaliation.⁴⁶⁷
- (378) In the present case, since price changes in the relevant market are easily monitored, deviation from price levels resulting from potential coordination can also be easily detected and retaliation could be immediate.
- (379) In relation to retaliation in the same market where the deviation occurs, the Commission's market investigation provides sufficient evidence supporting the theory that retaliation can occur in a timely and effective manner on the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations. Specifically, given the features of the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations, deviation by a fuel retailer from the nationally-set prices could be easily and almost instantaneously detected thanks to the high degree of transparency. Other fuel retailers could, therefore, punish a deviator by engaging in a price war, by lowering prices or offering aggressive discounts at national level.
- (380) Furthermore, post-Transaction, the number of local areas where the Parties and the other remaining strong player – Petrol – would interact increases significantly. Pre-Transaction, Petrol's and OMV Slovenija's fuel stations overlap in a total of

⁴⁶³ OMV Slovenija internal document (filename: Cene goriv na dan 28.1. - analiza trga).

⁴⁶⁴ Horizontal Merger Guidelines, paragraph 52.

⁴⁶⁵ Horizontal Merger Guidelines, paragraph 53.

⁴⁶⁶ Horizontal Merger Guidelines, paragraph 54.

⁴⁶⁷ Horizontal Merger Guidelines, paragraph 55.

383 local areas, whereas post-Transaction, Petrol's and the new entity's fuel stations would overlap in 414 local areas. This increase in the number of local interactions between the new entity and Petrol could facilitate coordination by establishing new post-Transaction contacts between the two main market players. This increase in the number of local interactions would strengthen deterrence by giving these players access to additional retaliation possibilities, as the damage the deviating fuel retailer would face from the competitor's lower prices would be higher than in a pre-Transaction scenario.

- (381) Moreover, while prices are set nationally, the Commission's market investigation – as detailed in Section 7.1.1.1.2.3 – shows how prices may also be set locally and, therefore, it is plausible that non-deviating fuel retailers could be able to quickly punish the deviating fuel retailer by lowering their prices in the local areas where the deviating company is stronger, triggering a price war. The Commission found consistent evidence that prices are progressively being set locally, such as that shown in Figure 19.

Figure 19: OMV Slovenija's pricing strategy in Slovenia

[Details on the Target's pricing strategy in Slovenia.]

*Source: OMV Slovenija internal document.*⁴⁶⁸

- (382) [Details on the Target's pricing strategy in Slovenia].

Figure 20: MOL's pricing strategy via the "Kalibrate" software

[Details on MOL's pricing strategy in Slovenia and policy about the use of a fuel pricing software.]

*Source: MOL internal document.*⁴⁶⁹

- (383) [Details on MOL's pricing strategy in Slovenia and information about MOL's use of fuel pricing software].
- (384) The progressive transition from prices set at national level to prices potentially being set at local level, coupled with the increase in the number of local interactions between the new entity and Petrol, make likely the existence of retaliatory mechanisms even at local level. Specifically, if Petrol or the new entity deviates from the price artificially set at national level, the non-deviating entity could trigger a retaliatory strategy, for instance lowering prices in those local areas where both the new entity and Petrol are present and where the deviating retailer is stronger to damage it more.
- (385) In relation to retaliation in a different market from the market where the deviation occurs, there is sufficient evidence supporting the theory that retaliation can occur in a timely and effective manner in different markets from the market where the deviation occurs. For example, retaliation may occur in the market for the storage of motor fuel in Slovenia.⁴⁷⁰ Petrol controls Instalacija, the largest storage facility in

⁴⁶⁸ OMV Slovenija internal document (filename: Pricing strategy_SI_2015 9dec2015.pptx).

⁴⁶⁹ MOL internal document (filename: FUEL PRICING_WI_final.docx).

⁴⁷⁰ Additionally, the Commission notes that Petrol provides MOL with other products and services, namely LPG for retail supply, heating for service stations, and non-fuel retail goods. Specifically, in relation to LPG for retail supply, Petrol supplies LPG to MOL for deployment in two of MOL's service stations in Slovenia, where Petrol owns the LPG tanks. Petrol also acts as a utility provider for MOL for the supply of natural gas and LPG for heating purposes at MOL's service stations. Finally, Petrol supplies MOL with a non-fuel retail product – Zibro Plus Extra 20L – primarily used by Italian customers and sold at MOL's fuel stations closer to the border between Slovenia and Italy. In all these cases, if, following a

Slovenia, which, based on the Parties' claims, is a key source for fuel imports from the sea and also for ex-refinery imports from neighbouring countries by rail.⁴⁷¹ Thus, every market player importing fuel in Slovenia without direct delivery is reliant on either Petrol's storage space in Instalacija or on other storage facilities in Slovenia, such as the Luka Koper storage space.⁴⁷² The Instalacija storage is also key for export volumes since it is a supply point for the Italian, Croatian, Bosnian and, to a more limited extent, the Austrian and Hungarian markets.⁴⁷³ Instalacija is the largest and best equipped petroleum storage depot in Slovenia, providing petroleum storage services also for *Zavod RS za blagovne* reserve (the obligatory stock reserve).⁴⁷⁴ The significance of Instalacija is well illustrated by Petrol's statement in its 2011 Annual Report concerning the acquisition of Instalacija. The 2011 Annual Report stated that "[...] of exceptional importance for the Petrol Group is the acquisition of the remaining 51 percent holding in Instalacija d.o.o., whereby we gained a controlling influence in the company. The acquisition of Instalacija d.o.o. is an important investment that enables Petrol to increase the safe supply of petroleum products to Slovenia. Moreover, the company is an optimal supply source for Slovenia, Croatia, and part of Bosnia and Herzegovina and will allow Petrol to expand its activity to EU markets. This business decision will bring a series of synergistic effects and is a crucial component of Petrol's strategy until 2014. Efficient procurement and logistics are the key elements enabling the achievement of the strategic objectives."⁴⁷⁵

- (386) Thanks to its ownership of Instalacija, Petrol controls the main storage facility in the country. Petrol also owns two additional depots in Slovenia, one near Ljubljana and one near Maribor (the latter is being used for supplies to Austria and Hungary as well).^{476,477} OMV Slovenija has historically been using Petrol's facilities to a significant extent to supply the Slovenian market mainly relying on OMV Slovenija's rented storage capacity at Petrol's Instalacija depot.⁴⁷⁸ MOL, on the other hand, has larger supply sources in the region, since it has several refineries and depots close to different Slovenian regions, providing cost effective logistical solutions independently from Petrol. MOL and Petrol, however, have entered into a storage contract for Instalacija on 14 October 2013. Under this contract, Petrol

price deviation carried out by the new entity, Petrol were to opt for a retaliatory strategy against the new entity, it could rapidly deteriorate the contractual conditions based on which it provides LPG, natural gas, or Zibro Plus Extra 20L to MOL, either by increasing the price charged for these products or reducing the quantities of these products made available to MOL.

⁴⁷¹ Form CO, paragraphs 286 and 301.

⁴⁷² For the sake of completeness, the Commission clarifies that there are no oil refineries in Slovenia. The country, therefore, is only supplied via imports. Oil products are imported in Slovenia mainly by the sea, specifically through the Port of Koper, either through the depots located at the Port of Koper or through Petrol's Instalacija site located next to the Port of Koper.

⁴⁷³ Form CO, paragraph 301.

⁴⁷⁴ Form CO, paragraph 591.

⁴⁷⁵ Petrol's 2011 Annual Report, page 13, available at https://www.petrol.eu/binaries/content/assets/skupina-petroleng/2018/reports/2011/annual_report_petrol_2011.pdf.

⁴⁷⁶ Form CO, Annex 23.

⁴⁷⁷ Petrol also co-owns a depot in Lendava, together with the CSO (the Agency of the Republic of Slovenia for commodity reserves) and operates the Celje depot of the CSO. Both depots are currently used for obligatory stocks only and not for commercial purposes.

⁴⁷⁸ Form CO, paragraphs 572-573. For completeness, it is noted that OMV does not have any own production (there is no production at all in Slovenia), nor access to any exclusive supply sources independent from the OMV Group for importing fuel products into Slovenia. OMV sources its fuel supplies from [details on the Target's fuel supply sources in Slovenia].

provides MOL with a maximum of [...] storage space at Instalacija. The contract has been concluded for an indefinite term.⁴⁷⁹

- (387) The Notifying Party submits that, post-Transaction, the new entity would take over OMV Slovenija's rented storage at Instalacija; however, it would have to review cost optimisation opportunities and might eventually decide not to renew or to reduce its Slovenian rented storage volumes.⁴⁸⁰ Regardless of whether this is an actual alternative, based on MOL's internal documents, it appears that renting storage space at Petrol's Instalacija depot would still represent one of the best options available:

Figure 21: MOL's logistics strategy

[Details on MOL's logistics strategy in Slovenia.]

Source: MOL internal document.⁴⁸¹

- (388) One competitor also notes that "*MOL could have a problem of capacity, since Petrol controls most of the storage and there are currently export restrictions out of Austria*",⁴⁸² suggesting that, post-Transaction, MOL might still need OMV Slovenija's rented space at Instalacija as direct deliveries from Austria might not necessarily be a viable option.
- (389) It is apparent that the Transaction will increase the new entity's dependence on Petrol's storage capacity at Instalacija, as MOL will take over also OMV Slovenija's rented space at the Instalacija depot. It is arguable that, should the new entity lower prices at the retail level, Petrol could credibly and effectively retaliate against the new entity by worsening the conditions of access to its storage space at Instalacija, which remains a crucial entry point for the supply of fuel in the Slovenian market.

7.2.1.4.4.3. Reaction of outsiders

- (390) For coordination to be sustainable, the foreseeable reaction of non-coordinating firms (including actual and potential competitors), as well as customers, should not jeopardise the outcome expected from coordination.⁴⁸³
- (391) *Actual competitors.* As explained already in Section 7.2.1.3.2, it is unlikely that other small competitors, such as Logo or Maxen, already active in the market would be able to exert a significant constraint on the new entity and, specifically, would be able or have the incentive to render the coordinated behaviour unprofitable. The remaining fuel suppliers, *i.e.*, Logo, Maxen and the few white pumpers, represent only 6% by volume of the market for the retail supply of motor fuel from non-DARS stations in Slovenia in the B2C segment. Therefore, given this negligible market presence, these companies would not be able to disrupt coordination via price reductions and they would most likely passively adapt to the prices artificially set by the coordinated behaviour.
- (392) This is confirmed also by some competitors who, not only highlight their much smaller size *vis-à-vis* the Parties and Petrol, but also stress their dependence on these bigger players in terms of wholesale fuel supplies, which further weakens them. For

⁴⁷⁹ Form CO, paragraph 604.

⁴⁸⁰ Form CO, paragraph 602.

⁴⁸¹ MOL internal document (filename: Slovenia supply options – Koper).

⁴⁸² Non-confidential minutes of call with a competitor on 23 September 2022.

⁴⁸³ Horizontal Merger Guidelines, paragraph 56.

instance, one competitor indicates “[it] would be very small compared to Petrol and MOL and that it buys from them on the wholesale market”.⁴⁸⁴

- (393) The Parties’ internal documents, moreover, confirm that they [details on the Parties’ business strategy in Slovenia], as already explained in Section 7.2.1.4.4.1.
- (394) *Potential competitors.* Potential competition does not appear to effectively constrain the Parties and Petrol. The Commission considers that its findings in Section 7.2.1.3.3.2.4 are fully applicable to the question of whether pressure from potential new entrants could defeat price coordination. Thus, sustainability of coordination does not appear constrained by possible new entrants.
- (395) *Customers’ buyer power.* Customers’ buyer power does not appear to be a sufficient constraining factor in the retail market for the supply of motor fuel from non-DARS stations in the B2C segment, as detailed above from recital (187) to (191). The customer-base in this market is unsophisticated and particularly fragmented, as it is composed of car drivers choosing their fuel provider merely based on prices and proximity to the fuel station.⁴⁸⁵ It follows that customers would not be able to exercise a sufficient constraint on price coordination. Thus, sustainability does not appear constrained by customers.
- (396) Based on the above, the Commission concludes that neither competitors nor customers would have the ability or incentive to disrupt any attempts of price coordination in Slovenia, which would therefore be sustainable.

7.2.1.4.5. Causation between the Transaction and the risk of coordinated effects

- (397) A merger can only create the risk of coordinated effects if it changes coordination incentives in such a way that either a pre-existing coordination becomes significantly easier to sustain or by permitting firms to engage in tacit coordination in the first place.⁴⁸⁶
- (398) The evidence available suggests that already before the Transaction, during the liberalisation period, MOL, OMV Slovenija and Petrol had strongly aligned their commercial behaviour and had managed to increase prices and their unit margins considerably. However, in view of the very limited time period for which valid observations are available, the Commission cannot conclude with a reasonable degree of probability that that alignment of their commercial conducts allowed the three largest players to raise prices above the competitive level.
- (399) The remainder of this Section will demonstrate that the Transaction would increase the likelihood of the new entity and Petrol coordinating their behaviour and raising prices to an anticompetitive level, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU, and irrespective of whether they were already coordinating pre-Transaction. This Section, therefore, examines the changes brought about by the Transaction and how they would affect the main players’ incentives to engage in coordination.

7.2.1.4.5.1. Reduction in the number of players

- (400) The Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations is currently an extremely concentrated market, with only three firms (MOL, OMV Slovenija and Petrol) together accounting for almost the totality

⁴⁸⁴ Non-confidential minutes of call with a competitor on 10 October 2022.

⁴⁸⁵ Responses from B2C customers of MOL and OMV Slovenija to a short questionnaire.

⁴⁸⁶ Horizontal Merger Guidelines, paragraph 42.

of the market ([90-100]% in terms of volumes and 90% in terms of stations). The Transaction would further increase the level of market concentration by reducing the number of retailers from three to two consolidating a *de facto* duopoly in the market. Post-Transaction, the market would be essentially and almost in its entirety in the hands of MOL and Petrol. The increase in market concentration resulting from the Transaction is also very high. The HHI post-Transaction in the market would be [4,000-4,500] in terms of volume, with a *delta* of [800-900] in terms of volumes and of 4435 with a *delta* of 443 in terms of stations.⁴⁸⁷ At local level, in the large majority of the local areas in which the Transaction has a relevant impact, the collective share of Petrol and the new entity post-Transaction would be higher than 90%. The Transaction therefore further increases concentration in markets which are already extremely concentrated.

- (401) The reduction in the number of firms in a market may, in itself, be a factor that facilitates coordination.⁴⁸⁸ However, the Commission does not base its finding that the Transaction may increase the likelihood of the new entity and Petrol coordinating their behaviour only on the reduction in the number of market players, as the Notifying Party claims.⁴⁸⁹ On the contrary, what is decisive is that this reduction takes place in a market with certain characteristics and coupled with a number of other compelling factors.
- (402) The reduction in the number of market players is particularly relevant in this case for several – unusual – structural factors which are present in the Slovenian market for the retail supply of motor fuel to B2C customers from non-DARS stations.
- (403) First, the market was already extremely concentrated pre-Transaction. Second, the market presents a number of features that make it particularly prone to coordination, such as high transparency, homogeneous products, lack of innovation, relatively stable environment. Third, already pre-Transaction, a very strong alignment in the market behaviour of the market players has been observed during the liberalisation period. Forth, the market player removed is a very close competitor and represents a significant constraint. Fifth and most importantly, the reduction in the number of market players is particularly relevant in this case, because the market player removed was the only competitive constraint that OMV Slovenija and Petrol faced pre-Transaction. Although a number of small retailers would remain active, they would only represent a marginal share of the market, they are distant competitors in terms of pricing, geographic location and other characteristics, and overall do not exert any meaningful competitive constraint to the Parties or Petrol, as the internal documents and market investigation have confirmed. Moreover, expansion of current market players and market entry are considered very unlikely (Section 7.2.1.3.3.2.4), and consumers do not have any meaningful bargaining power (Section 7.2.1.3.3.2.5). Thus, post-Transaction, the new entity and Petrol would face no appreciable competition constraint and, thus, no barrier or obstacle to coordinate their behaviour and increase prices.⁴⁹⁰

⁴⁸⁷ The smaller *delta* in terms of number of stations is due to Petrol's high number of stations in Slovenia.

⁴⁸⁸ Horizontal Merger Guidelines, paragraph 42.

⁴⁸⁹ Reply to Article 6(1)(c) Decision, paragraph 70.

⁴⁹⁰ The Notifying Party's criticism in its reply to Article 6(1)(c) Decision (paragraph 72) that question 43.1 of Questionnaire 1 Retail Markets – Competitors in Slovenia ("*If yes [i.e. coordination could take place], please explain between which competitors could that coordination take place [post Transaction]*") is a leading question, as it does not allow any other reasonable answer than Petrol and MOL is unfounded. The question is designed to identify any other players (also with smaller networks,

- (404) Moreover, the reduction of market players is particularly relevant in this case as it will likely shift MOL's and Petrol's incentives in a way which is linked to their very specific market position and the absence of any other alternatives.
- (405) First, as the Transaction will triple MOL's number of stations, so will it increase considerably its profits from collusion and thus its incentives to coordinate. The removal of OMV Slovenija as an independent supplier would considerably increase the profit MOL would obtain from a potential coordination with Petrol to increase prices, thus making it more attractive. For the same reason, the cost of undercutting Petrol to try to gain volume at the expense of its margin would be significantly higher and thus a considerably less attractive option.
- (406) Second, MOL's considerable growth in number of stations and volumes sold will also increase its retaliation potential towards Petrol and, consequently, the latter's incentives to align its market conduct to avoid retaliation.
- (407) Third, the Transaction will alter to a significant extent the local overlaps of the Parties by making Petrol the second market player in a number of local areas where, prior to the Transaction, it was the market leader. In fact, pre-Transaction, Petrol is leader in a total of 359 local areas, whereas OMV Slovenija is leader in 84 areas, and MOL in 24. In other words, there is a total of 108 areas where pre-Transaction Petrol is not market leader. Post-Transaction, Petrol's leadership positions decrease to 269, *i.e.*, it will lose 25% of its previous leadership positions. Conversely, post-Transaction, the new entity will be leader in 198 local areas, which is more than double compared to the areas where OMV Slovenija has a leadership position pre-Transaction.⁴⁹¹ One of the main takeaways of this switch of leaderships at local level is that Petrol's retaliation potential increases significantly as it will allow it to launch targeted and temporary price wars restricted to the areas where the new entity will be leader, even more so considering the transition from nationally-set prices to more local pricing. This will strengthen deterrence against deviation since Petrol will minimise the losses it will suffer from due to these retaliatory measures while at the same time maximising the deterrent effect for MOL.⁴⁹²
- (408) Fourth, the Transaction will also increase the interactions at local level between the two largest players in the Slovenian market significantly. Prior to the Transaction, Petrol's and OMV Slovenija's stations overlap in a total of 383 areas, whereas post-Transaction, Petrol's and the new entity's stations would overlap in 414 out of the 470 local areas.⁴⁹³ This increase in the number of contacts in the market between the

such as Maxen, or with strong presence in specific areas) which would have an incentive to engage or follow in a potential coordination. The fact that respondents "*would necessarily specify MOL and Petrol in their reply*" "*simply because there are no other major nationwide networks post-Transaction*" does not show any bias in the Commission's questions but merely reflects the extremely concentrated nature of the Slovenian market for the retail supply of motor fuel to private customers in non-DARS stations and the lack of any other meaningful competing retailers.

⁴⁹¹ Commission's assessment based on station-level data and overlaps provided by the Parties accompanying "*Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija*" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

⁴⁹² Although currently prices are set for the most parts as national level, it is not unlikely that in a near future market players will evolve towards local pricing, as it has happened in Croatia and many other EU countries and as the market investigation and internal documents seem to suggest. Local pricing does not need to become a permanent feature of the market. Petrol could adopt these locally targeted measures only exceptionally when retaliation becomes necessary.

⁴⁹³ Commission's assessment based on station-level data and overlaps provided by the Parties accompanying "*Note on the design and details of the remedy proposal for M.10438 – MOL / OMV*"

two largest players, even if not particularly high (8% growth), cannot be ignored as one more factor which would, first, facilitate coordination by establishing new post-Transaction contacts between the two main market players and, second, additionally strengthen deterrence by giving these players access to additional retaliation possibilities (applying local pricing) in case of deviation.

- (409) A change of incentives, in particular the increase in the profit from collusion or in the retaliatory potential of the merging entities, may be present in any other situations where there is a reduction in the number of market players. What is specific to this case, though, is the magnitude of this change of incentives. In fact, as a result of the Transaction, MOL will triple the volume of motor fuels sold in the Slovenian market for the retail of motor fuel to B2C customers from non-DARS stations, from [10-20]% to almost [40-60]% of the volumes sold, reducing its difference with Petrol from [30-40] percentage points to only [0-5]. The change of incentives of MOL is therefore particularly relevant in this case, and it is aggravated by the absence of any other competitive constraint which could undermine, mitigate or somehow soften this incentive to reach terms of coordination.
- (410) In this regard, the Notifying Party submits⁴⁹⁴ that the Transaction is fundamentally pro-competitive since, post-Transaction, MOL's profit maximising fuel retail strategy in Slovenia will necessarily have to focus on higher volumes, which can only be reached by setting lower prices compared to its key competitors. According to MOL, this strategy would be the result of essentially three factors. First, post-Transaction, MOL Group's companies would be able to realise cost efficiencies and supply synergies only to the extent they are able to expand volumes in Slovenia.⁴⁹⁵ Second, according to the volume expansion model, MOL will be able to sell to the Slovenian market the excess output volumes resulting from the upgrade of the Rijeka refinery generating an extra profit compared to the alternative destination to these volumes (essentially, the Mediterranean), some of these extra costs would then be passed-on to consumers.⁴⁹⁶ Third and more generally, as the new entity is part of a vertically integrated group, it will be forced to carry out a business plan that is based on a need to expand volumes.⁴⁹⁷
- (411) In relation to the nature of the new entity as a 'vertically integrated group', the Commission notes that this circumstance is not new or Transaction-specific. MOL was already pre-Transaction a vertically integrated group. This did not prevent or discourage MOL from maintaining its prices strongly aligned to those of Petrol and OMV Slovenija during the liberalisation period, eventually experiencing a very considerable increase in its unit margin during that very short period of time.
- (412) It is true that, as a result of the upgrade of the Rijeka factory, MOL will be able to achieve additional synergies and cost savings in relation to its sales to Slovenia. However, as will be explained from recital (612) on, the magnitude of these savings and synergies will be, at best, very modest, below [0-5]% of the fuel retail price according to the Notifying Party own calculations. As regards the volume expansion model, the Notifying Party does not provide any causal link between the volume targets presented and the alleged efficiencies. The Commission notes that, without

Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

⁴⁹⁴ Reply to Article 6(1)(c) Decision, paragraph 78.

⁴⁹⁵ Form CO, Annex 64.1.

⁴⁹⁶ Form CO, Annex 64.2.

⁴⁹⁷ Reply to Article 6(1)(c) Decision, paragraph 83.

factoring these alleged synergies and efficiencies, the incentives of MOL and Petrol to reach terms of coordination are particularly high since, as already explained, the Transaction would remove the only source of competition (actual or potential) that both undertakings currently face in the market. Against this background, the Commission takes the view that the very limited synergies and efficiencies claimed by the Notifying Party are clearly insufficient to outweigh the anticompetitive effects of the Transaction.

- (413) In conclusion, as the Transaction will remove the only source of competition of MOL and Petrol in a market where competition already seemed to be deteriorated, this removal is, in the Commission's view, decisive to conclude that the Transaction would increase the likelihood of coordination between the new entity and Petrol.

7.2.1.4.5.2. Removal of an important competitive constraint

- (414) A merger may increase the likelihood or significance of coordinated effects not only because of a reduction in the number of firms active in a given market. For instance, a merger may involve a “maverick” firm that has a history of preventing or disrupting coordination, for example by failing to follow price increases by its competitors, or has characteristics that gives it an incentive to favour different strategic choices than its coordinating competitors would prefer.⁴⁹⁸
- (415) As explained in Section 7.2.1.3.3.2.3, one of the effects of the Transaction will be the removal of an important competitive force. Although MOL cannot be considered a “maverick” or a particularly aggressive competitor in terms of pricing, it may be considered an important competitive force as regards non-price competition taking into account its organic and inorganic expansion, its achieved growth objectives, its rolling out of premium products, its spending in network and its brand awareness improvements. This intensive non-price competition distinguishes MOL from other competitors in the market.
- (416) The Commission notes this type of competition was linked, at least in part, to MOL having a relatively smaller network (when compared with Petrol and OMV Slovenija) and its willingness to grow. This is illustrated by MOL's organic and inorganic growth objectives for the future or its investments in brand awareness. As regards premium products, MOL's strategy was to “[*details on MOL's sales policy and strategy in Slovenia on the market of motor fuels*]” and [details on MOL's sales policy and strategy in Slovenia on the market of motor fuels].⁴⁹⁹ More generally, MOL's internal documents confirm that MOL's brand awareness has been increasing in recent years: “[*details on MOL's sales policy and strategy in Slovenia on the market of motor fuels*]”.⁵⁰⁰
- (417) The incentives to continue investing in this type of non-price competition will very likely disappear – or at the very least will be much mitigated – once MOL manages to triple its size as a result of the Transaction. The eagerness to grow via acquisitions or establishment of new stations or the aggressiveness in the investment policy in brand awareness, for instance via new services and products, cannot be the same for a retailer with a [10-20]% of the market than for a player with almost half of the market. In this sense, it is reasonable to assume that the intense non-price competition put in place by MOL during all these years to grow in the market will

⁴⁹⁸ Horizontal Merger Guidelines, paragraph 48.

⁴⁹⁹ Notifying Party's reply to RFI 5, question 7.1.

⁵⁰⁰ MOL internal document (filename: Business review template_BP2022.pptx).

lose relevance or that it will tend to be aligned (in terms of magnitude at least) to that of its main competitor, Petrol. The Slovenian Consumers' Association explained that the Transaction could have negative effects on non-price competition in the market: *"going from three to two players may cause competition on services (car washing, shops, restaurants, loyalty discounts) to deteriorate. These were indeed services in which retailers invested when margins were limited as a way to attract clients. If prices go up and there is only one competitor, a retailer may not see the need to necessarily invest on these"*.⁵⁰¹ This loss of non-price competition is particularly relevant in case like the present where price competition in the market is already highly deteriorated.

7.2.1.4.5.3. Increase in symmetry

- (418) Besides reducing the number of players and removing an important competitive force from the market, the Transaction would also increase symmetry considerably among the two main players in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations, both at national and at local level.
- (419) Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetrical, especially in terms of cost structures, market shares, capacity levels and levels of vertical integration.⁵⁰² The reason why symmetry is conducive to coordination is two-fold. On the one hand, when firms are similar, it is easier for them to tacitly agree on a common course of action to maximise their joint profits. On the other hand, such conduct is also appreciably more likely to be successful. This is because the existence of even a single smaller maverick with misaligned incentives can disrupt the ability of other firms to coordinate prices.
- (420) In addition, the Commission notes that, while firms may in general find it easier to coordinate if they are relatively symmetrical,⁵⁰³ this does not mean that perfect symmetry is a necessary pre-condition for a finding of coordinated effects. The likelihood of coordination must be assessed on the basis of numerous factors related to the market structure and position of the market players, symmetry being only one of these. The Commission therefore rejects the notion that coordination is implausible where perfect symmetry is not present. The Commission in fact has in the past found on several occasions that concentrations could increase the likelihood, stability or effectiveness of coordination even with a significant difference of market shares, provided that other conditions and market circumstances were present that would facilitate coordination.⁵⁰⁴
- (421) In the case at hand and as explained in this Section, the Commission acknowledges that the symmetry will not be perfect. However, the Transaction will significantly increase the symmetry between the new entity and Petrol and the two undertakings will be relatively symmetrical.
- (422) First, the Transaction will increase significantly the symmetry at national level between the first and the second market players in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations, since the symmetry in market share between Petrol and MOL will increase, as shown in Table 1 above.

⁵⁰¹ Non-confidential minutes of call with a consumers' association on 13 September 2022.

⁵⁰² Horizontal Merger Guidelines, paragraph 48.

⁵⁰³ Horizontal Merger Guidelines, paragraph 48.

⁵⁰⁴ See, for instance, Cases M.7881 – *AB InBev/SABMiller* and M.8444 – *Arcelormittal/Ilva*.

- (423) Second, at local level, the increase in symmetry is also considerable, Table 9 and Table 10 show the average local market shares of MOL, OMV Slovenija and Petrol, pre-Transaction, and of MOL and Petrol, post-Transaction, in the local areas designed using their respective stations as reference stations. Pre-Transaction, there is a considerable difference between the largest market players, as reflected in Table 9. Whereas in the areas around Petrol's stations, Petrol has a [50-60]% average share and OMV Slovenija only a [20-30]%, in the areas around OMV Slovenija's stations, the latter had a [40-50]% average share and Petrol's share was quite significant, [30-40]%. In other words, Petrol was considerably stronger in the areas where OMV Slovenija's stations are the reference than OMV Slovenija was in the areas around Petrol's stations. The gap was even larger comparing Petrol and MOL, with Petrol being stronger than MOL even in the areas around MOL's stations. On the contrary, Table 10 shows how, post-Transaction, the symmetry between the two largest players in the market would become almost perfect at local level: Petrol and MOL would have the exact same share in the areas both around their own stations ([50-60]%) and around each other's stations ([30-40]%).⁵⁰⁵ This data shows how, also at local level, the incentives of the largest players, and their retaliation potential, would be significantly more aligned.

Table 9: Average local market shares pre-Transaction, by identity of reference stations (in volume)

Brand of reference station	No. of areas	Ave. local market shares of MOL	Ave. local market shares of OMV	Ave. local market shares of Petrol
MOL	51	[20-30]%	[20-30]%	[40-50]%
OMV Slovenija	96	[10-20]%	[40-50]%	[30-40]%
Petrol	275	[10-20]%	[20-30]%	[50-60]%

Source: Commission analysis based on station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations. Brand-specific average volume motor fuels in 2021.

Table 10: Average local market shares post-Transaction, by identity of reference stations (in volume)

Brand of reference station	No. of areas	Ave. local market shares of MOL	Ave. local market shares of Petrol
New entity	147	[50-60]%	[30-40]%
Petrol	275	[30-40]%	[50-60]%

Source: Commission analysis based on station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations. Brand-specific average volume motor fuels in 2021.

- (424) Third, as regards the Notifying Party's arguments concerning the lack of symmetry in terms of stations and the lack of vertical symmetry, the Commission considers both ineffective.
- (425) The Commission notes that Petrol's and the new entity's market shares in terms of capacity are not as symmetrical as in volumes, as shown in Table 1. However, the increase in symmetry brought about by the Transaction considering capacity is also very significant (overall, the new entity would hold a combined market share of 32% in terms of number of stations) In other words, regardless of the metric used, the

⁵⁰⁵ Although since Petrol has more stations there would also be more areas around its stations than around MOL's.

Transaction increases significantly the symmetry and thus aligns MOL's and Petrol's incentives and their retaliation potential towards each other.

- (426) Moreover, the fact that Petrol has more stations in relation to its volumes is only the consequence of Petrol having a lower output per station, but this circumstance does not affect MOL's retaliatory potential, which is driven by the volumes it can "steal" from Petrol. Moreover, using shares in terms of stations does not change in any way the other factors present in the market, such as the high transparency and concentration, the homogeneous nature of the product and, most importantly, the lack of other competitors with misaligned incentives to the main players, who could threaten the stability of the coordination. Although Maxen has a higher share in terms of stations (4%) than in terms of volumes ([0-5]%), it is highly unlikely that this player may threaten the coordination between Petrol and MOL, since it is a very distant player in terms of geographic presence and pricing and is present mostly in areas with less traffic and less competition, as its market shares in terms of volumes demonstrate.
- (427) In relation to the different degree of vertical symmetry between MOL and Petrol, this is a pre-existing feature which did not incentivise MOL in the past to be particularly competitive in terms of price, and in fact it did not prevent it from having its totem prices strongly aligned with those of Petrol during the period of liberalisation. As to the new synergies and efficiencies resulting from the Rijeka upgrade, these are of a very limited amount and therefore an insufficient magnitude to outweigh the potential harm to competition caused by the Transaction.
- (428) In view of the above, the Commission concludes that the Transaction increases considerably MOL's and Petrol's symmetry as regards their market presence – and this regardless of the metric used measure it – and thus will align considerably their incentives to coordinate in the market. The Commission also considers that in view of the other market features (transparency, type of product, pricing, retaliation potential and existence of deterrent mechanisms and unlikely reaction from outsiders), the incentives to deviate from this coordination would be very limited and hence likely insufficient to overcome the incentives to coordinate.

7.2.1.4.5.4. Increase in market transparency

- (429) The Transaction also results in an increase in the transparency in the market. Even though monitoring is already relatively easy in such a concentrated and transparent market, the Commission considers that the removal of one competitor will still make it even easier, as market players have confirmed (see Section 7.2.1.3.3.2.3). Post-Transaction, MOL will only need to monitor one price point per product (Petrol's), which usually changes once per week.⁵⁰⁶
- (430) At the same time, the Transaction would remove from the market the most 'complex' market player in terms of pricing. In fact, as explained from recital (334) to (337) above, while MOL and Petrol essentially had only one price point per product in their non-DARS stations, OMV Slovenija had up to [...] price points, including the discounted prices applied by its unmanned stations under its brands Avanti and Diskont. Therefore, within the overall transparency and simplicity of the market, it could be said that OMV Slovenija was by far the less predictable player and the least

⁵⁰⁶ Should prices become more local in the near future, the monitoring will not be significantly more difficult as the information is readily available on goriva.si.

easy to follow. MOL's internal documents suggest that [details on MOL's future pricing policy and strategy on the market of motor fuels in Slovenia].⁵⁰⁷

- (431) In sum, the removal of the competitor with the most price points – and in the absence of any other smaller but relevant competitor with different incentives – the Transaction will turn an already very simple and predictable market in an almost perfectly transparent one.

7.2.1.4.5.5. Effects on the Transaction according to competitors and stakeholders

- (432) Although the results of the market investigation as regards the effects of the Transaction were slightly mixed,⁵⁰⁸ some of the competitors, market experts, and consumers' associations expressed very specific concerns in relation to how the Transaction could increase the likelihood, stability or effectiveness of coordination. The Commission considers these concerns credible, as they are consistent with the rest of data collected during the market investigation, in particular with the market structure and with the Parties' past behaviour.
- (433) Generally, most of the competitors who provided a substantiated reply agreed that post-Transaction, in a situation of market liberalisation, it would be easier for MOL and Petrol, given their respective market positions, to coordinate prices in the Slovenian retail market.⁵⁰⁹ Moreover, the majority of competitors who expressed an opinion considered that it would be profitable for MOL and Petrol to coordinate their prices.⁵¹⁰
- (434) More specifically, one of the competitors indicated that “[i]n the event of a merger, MOL and Petrol would have a majority market share and could agree to increase margins”.⁵¹¹ The same competitor was of the view that, since as a result of the Transaction, MOL will become closer in size to Petrol “[w]e will have less competition [and] [t]here will be a greater possibility of agreement on price policy”.⁵¹² It further explained how the Transaction would result in more transparency and how it would affect its own pricing policy: “[i]n a liberalized market, [...] would expect MOL and Petrol to agree – whether expressly or implicitly – on the same price. After the transaction, this sort of agreement would be much easier, as there would only be two players in the market. If MOL and Petrol were to increase prices, [...] would probably follow, especially in view of its very low margins”.⁵¹³ On the same line, it added “post-transaction (in an environment of free pricing) it would be easier for MOL and Petrol to coordinate prices than before the transaction. The reason for this is obvious: it would be easier to agree prices when they only have to do it with one player rather than with two different players”.⁵¹⁴ More specifically, it expressed its view that “assuming the absence of price

⁵⁰⁷ MOL internal document (filename: RE: Triglav model input data - FUEL UNIT MARGIN REVISED). of 30 March 2021.

⁵⁰⁸ Which in part is also a reflection of the very few competitors active in the market, most of which are very small retailers with one or two stations. In addition, it was difficult for the market participants to express a clear opinion in view of the international and national context (long history of price regulation and renewed price regulation following the Russian war of aggression against Ukraine)

⁵⁰⁹ Non-confidential replies to question 20 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁵¹⁰ Non-confidential replies to question 20.2 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁵¹¹ Non-confidential reply to question 20.2 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁵¹² Non-confidential reply to question 30 of Questionnaire 8 Retail Markets – Competitors in Slovenia.

⁵¹³ Non-confidential minutes of call with a competitor on 5 July 2022.

⁵¹⁴ Non-confidential minutes of call with a competitor on 23 September 2022.

*regulation, MOL or Petrol would [not] have the incentive to lower prices to win market share”.*⁵¹⁵

- (435) One of the most relevant competitors left on the market expressed its view of how the new entity would price its products post-Transaction, and assuming a scenario of freedom to set prices: *“MOL will probably increase prices to OMV’s levels. In fact, this would be profitable as Petrol would be the only competitor left on the market and its prices would still stay higher. Finally, post-Transaction there would only be two operators left on the market and it would be easier for them to coordinate on prices”.*⁵¹⁶ The same competitor explained how the market structure would make coordination simple: *“it would be easy for Petrol and MOL to coordinate prices as there would be only two main players instead of three and, if there was no price regulation, they could do whatever they want”.*⁵¹⁷
- (436) Another competitor considered that, as a result of the Transaction, *“competition in the market will be harmed as the Slovenian market will become more concentrated. On the retail level, the market situation will change from three main players (Petrol, OMV, MOL) to two main players in the B2C market and that is not positive for the competition”.*⁵¹⁸
- (437) Other stakeholders contacted by the Commission also expressed concerns in relation to the Transaction. An independent expert contacted by the Commission was of the same view and expressed its view on the absence of incentives by Petrol and MOL to compete on prices post-Transaction: *“The transaction will create a duopoly on the main commuting roads. With only two players, the market will be even more prone to tacit coordination. The two retailers will have less incentives to compete with prices”.*⁵¹⁹ Finally, as already indicated in (417) the Commission also contacted the Slovenian Consumers’ Association, who commented on the negative effects that the Transaction could have on non-price competition in the market by reducing the incentives of retailers to invest on services offered on the stations.⁵²⁰

7.2.1.4.6. Conclusion on horizontal coordinated effects

- (438) In light of the elements illustrated in this Section, the Commission concludes that the Transaction will increase the likelihood of the new entity and Petrol coordinating their behaviour in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations, and raising prices to an anticompetitive level, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU, and this irrespective of whether they were already coordinating pre-Transaction.
- (439) Consequently, the Commission takes the view that the Transaction will lead to a significant impediment to effective competition in the internal market due to horizontal coordinated effects in the Slovenian market for the retail supply of motor fuels to B2C customers from non-DARS stations.

⁵¹⁵ Non-confidential minutes of call with a competitor on 23 September 2022.

⁵¹⁶ Non-confidential minutes of call with a competitor on 20 July 2022.

⁵¹⁷ Non-confidential minutes of call with a competitor on 10 October 2022.

⁵¹⁸ Non-confidential minutes of call with a competitor on 13 July 2022.

⁵¹⁹ Non-confidential minutes of call with an industry expert on 20 September 2022.

⁵²⁰ Non-confidential minutes of call with a consumers’ association on 13 September 2022.

7.2.2. Retail supply of AdBlue (Slovenia)

- (440) AdBlue is a reducing agent used in diesel-powered vehicles (including freight trucks and public transport vehicles in addition to personal vehicles) to reduce exhaust gas nitrogen oxide (NO_x) emissions. AdBlue is a solution of high purity urea (an organic compound), dissolved in demineralised water, that can only be used in conjunction with Selective Catalytic Reduction ('SCR') technology, where it leads to a reduction of harmful emissions by approximately 90%. At the retail level, AdBlue is sold from pumps at some fuel stations and in bottles in retail outlets including shops at fuel stations.

7.2.2.1. Market definition

7.2.2.1.1. Product market definition

7.2.2.1.1.1. Commission's precedent

- (441) In relation to AdBlue, the Commission has not previously defined a product market that focused solely on its retail supply. In one past decision, the Commission considered both the production and supply of AdBlue together and it did not challenge the parties' view that AdBlue is a distinct product.⁵²¹

7.2.2.1.1.2. Notifying Party's view

- (442) The Notifying Party submits that AdBlue forms a distinct product due to its uniform product properties and the lack of demand side substitutability with any other product in relation to SCR technology⁵²² and that the relevant product market includes the retail supply of AdBlue from pumps at fuel stations and in bottles from all retail channels, in particular retailers (hypermarkets, supermarkets, discounters), technical stores and 'home delivery' of large containers (e.g. for farmers, bus companies and other transport companies as well as car service workshops, who can choose between refilling their fleet at the pump by the use of a fuel card or arranging 'home delivery' of AdBlue). The Notifying Party submits that a narrower product market definition, such as sales from fuel stations only, is not warranted.⁵²³

7.2.2.1.1.3. Commission's assessment

- (443) The vast majority of respondents to the market investigation replied that the retail supply of AdBlue is a distinct product market.⁵²⁴ One respondent noted that AdBlue *"is not a fuel, it is an additive"*, and another noted that it is a *"market for transporters only, because trucks consume 95% of AdBlue"*.⁵²⁵
- (444) One respondent noted that *"For B2B AdBlue sales on retail is the main channel when trucks are on the road. For B2C currently, the main channel is workshops but retail is increasing"*⁵²⁶, which the Commission takes as indicating that truck drivers mainly buy from fuel stations and that B2C customers mainly get their supplies when their vehicles are being serviced in workshops.

⁵²¹ Case M.4730 – Yara/Kemira GrowHow, paragraphs 189 – 195.

⁵²² Form CO, paragraph 126.

⁵²³ Form CO, paragraph 549 and Notifying Party's reply to RFI 28, question 14.

⁵²⁴ Non-confidential replies to question 64 the Questionnaire 1 Retail Markets – Competitors in Slovenia and non-confidential replies to question 46 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵²⁵ Non-confidential replies to question 46.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵²⁶ Non-confidential responses to question 64.1 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

(445) No other respondents expressed a view on whether the market should be segmented between the supply of AdBlue from pumps at fuels stations, the supply of AdBlue in bottles at all retail outlets and the ‘home delivery’ of large containers of AdBlue.⁵²⁷

(446) Based on the above, the Commission concludes that the relevant product market is the retail supply of AdBlue, leaving open whether that should be further segmented between supply of AdBlue from pumps at fuels stations, supply of AdBlue in bottles at all retail outlets, and ‘home delivery’ supply. The Commission will conduct its assessment based on the narrowest plausible segment, i.e. the retail supply of AdBlue from pumps at fuels stations.

7.2.2.1.2. Geographic market definition

7.2.2.1.2.1. Commission’s precedent

(447) The Commission has not defined a geographic market for the retail supply of AdBlue. In one past decision, for the wider market for the production and supply of AdBlue the Commission considered the geographic market to be EEA-wide in scope, noting that AdBlue is supplied from a limited number of production sites to customers all over the EEA.⁵²⁸

7.2.2.1.2.2. Notifying Party’s view

(448) The Notifying Party considers that the geographic market for retail sales of AdBlue is national in scope, similarly to the geographic scope of the retail sales of motor fuels based on overlapping catchment areas and the chain of substitution.⁵²⁹

7.2.2.1.2.3. Commission’s assessment

(449) Although the majority of customers who expressed a view in the market investigation replied that the relevant geographic market for the retail supply of AdBlue is wider than national, there was a mixed response from competitors as to whether the market is national or wider than national, with one competitor noting that the geographic scope of the market for AdBlue is “*wider for B2B as Slovenia is a transit country; for B2C [it is] less relevant, so mainly a national focus*”.⁵³⁰

(450) In view of the above, the Commission leaves open the exact geographic market definition and will conduct its assessment considering the narrowest plausible segment, i.e., a national geographic market, comprising the territory of Slovenia.

7.2.2.2. Competitive assessment

7.2.2.2.1. Notifying Party’s view

(451) The Notifying Party notes that MOL sources AdBlue for resale at its fuel stations from an independent supplier and only supplies - marginal volumes - of bottled AdBlue from intra-group sources,⁵³¹ and that neither Party has any “home delivery” AdBlue sales.⁵³²

⁵²⁷ Non-confidential replies to question 64.1 Questionnaire 1 Retail Markets – Competitors in Slovenia and non-confidential replies to question 46.1 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵²⁸ Case M.4730 – Yara/Kemira GrowHow, paragraph 192.

⁵²⁹ Form CO, paragraph 228.

⁵³⁰ Non-confidential replies to questions 65 and 65.1 of Questionnaire 1 Retail Markets – Competitors in Slovenia and non-confidential replies to question 47 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵³¹ Form CO, paragraph 546.

⁵³² Form CO, paragraph 544.

- (452) The Notifying Party submits that considering the Parties' market shares the Transaction does not lead to any appreciable horizontal effects, and does not cause a significant impediment to effective competition with regard to the retail sales of AdBlue.⁵³³

7.2.2.2.2. Market shares

- (453) MOL sells AdBlue by pump at 18 of its fuel stations and sells AdBlue in bottles at all of its fuel stations, with 95% of its total volume of AdBlue being sold by pump. OMV Slovenija sells AdBlue by pump at 28 of its fuel stations and sells AdBlue in bottles at most of its manned fuel stations, with 96% of its total volume of AdBlue being sold by pump.⁵³⁴
- (454) The Parties' combined market shares for the retail supply of AdBlue from pumps at fuel stations in Slovenia were [20-30]% ([5-10]% for MOL, [20-30]% for OMV Slovenija) in 2021. Petrol and Shell had [30-40]% and [20-30]% market shares respectively.⁵³⁵
- (455) The Parties' combined market shares in the wider market for the retail supply of AdBlue from pumps at fuel stations and in bottles from all retail outlets in Slovenia were [20-30]% ([0-5]% for MOL, [10-20]% for OMV Slovenija) in 2021. Petrol and Shell had [20-30]% and [10-20]% market shares respectively.⁵³⁶

7.2.2.2.3. Commission's assessment

- (456) The Commission notes the moderate combined market shares of the Parties, the limited overlap and the presence of large competitors, including Shell and the market leader Petrol, as well as the competition from "home delivery" services.
- (457) A majority of the respondents to the market investigation who expressed a view consider that the price of AdBlue sold at fuel stations will remain the same post-Transaction.⁵³⁷
- (458) On the basis of the above, the Commission considers that the Transaction does not lead a significant impediment to effective competition with respect to the market for retail supply of AdBlue in Slovenia as a result of horizontal non-coordinated effects.

7.3. Wholesale markets

7.3.1. Introduction

- (459) The Parties are both active as wholesale suppliers of fuels in Slovenia. This Section assesses the impact of the Transaction on the wholesale supply of four types of fuel in Slovenia: diesel, gasoline, heating oil, and bitumen.
- (460) Moreover, the Parties are also both active as wholesale suppliers of fuels in Croatia. The present Section also assesses the impact of the Transaction on the wholesale supply of four types of fuel in Croatia: diesel, gasoline, heating oil extra light, and heavy fuel oil.

⁵³³ Form CO, paragraph 545.

⁵³⁴ Form CO, paragraph 542.

⁵³⁵ Table 28, Form CO.

⁵³⁶ Table 29, Form CO and Notifying Party's reply to RFI 28, question 14.

⁵³⁷ Non-confidential replies to question 66 of Questionnaire 1 Retail Markets – Competitors in Slovenia and non-confidential replies to question 48 of Questionnaire 2 Retail Markets – Customers in Slovenia.

- (461) In previous Commission decisions, the market for the wholesale of fuels has been segmented by type of product, *inter alia*, gasoline, diesel,⁵³⁸ fuel oil, gas oil, heating oil, LPG and bitumen.⁵³⁹
- (462) In relation to a potential segmentation within the market for the wholesale supply of fuels depending on types of fuel, there is no evidence stemming from the market investigation that would justify departing from the Commission's precedents.⁵⁴⁰ Thus, for the purposes of the present decision, the Commission will conduct its competitive assessment for each fuel type where the Parties' activities overlap in Slovenia, *i.e.*, diesel, gasoline, heating oil, and bitumen.

7.3.2. *Non-retail supply of diesel and gasoline in Slovenia*

7.3.2.1. Market definition

7.3.2.1.1. Product market definition

7.3.2.1.1.1. Commission's precedents

- (463) In relation to the market for the wholesale supply of diesel and gasoline, in its past decisions, the Commission also considered this market to be potentially further segmented according to the size and the characteristics of the sale. Specifically, the Commission considered the identification of a market for ex-refinery sales and a separate market for non-retail sales. Ex-refinery sales are based on single delivery purchases in high volume lots sold directly by refineries at the refinery gate or delivered by primary transport to customers' terminals or storage facilities. Non-retail sales, on the other hand, are sales of smaller volume from the suppliers' inland storage facilities delivered to customers by secondary transport (generally by truck). This plausible market differentiation has often been left open. For instance, recently, in the Commission's decision of 14 July 2020 in Case M.9014 - *PKN Orlen/Grupa Lotos*, the Commission found that a distinction between the market for ex-refinery sales and non-retail sales was not pertinent for Poland.⁵⁴¹

7.3.2.1.1.2. Notifying Party's view

- (464) The Notifying Party is of the view that, for the purposes of the Transaction, the exact market definition, and in particular whether it is necessary to distinguish between ex-refinery and non-retail sales can be left open, since the Transaction does not lead to a significant impediment to effective competition regardless of the exact product market definition.⁵⁴²

⁵³⁸ As discussed in paragraph (40) above, in line with the Commission's past practice, despite belonging to different product markets, diesel and gasoline will be assessed jointly as refined oil products because, mainly due to supply-related considerations, market considerations applicable to gasoline are also applicable to diesel.

⁵³⁹ Cases M.6151 – *Petrochina/Ineos/JV*; M.3516 – *Repsol YPF/Shell Portugal*; M.6935 – *Argos/Sopetral*; and M.9952 – *PKN Orlen/PGNiG*.

⁵⁴⁰ Non-confidential replies to questions 64, 68, 69 and 75 of Questionnaire 1 Retail Markets – Competitors in Slovenia, non-confidential replies to questions 46, 50, 51, and 57 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵⁴¹ Cases M.7311 – *MOL ENI Ceska/ENI Romania/ENI Slovensko*; M.6935 – *Argos/Sopetral*; and M.9014 – *PKN Orlen/Grupa Lotos*.

⁵⁴² Form CO, paragraph 101.

7.3.2.1.1.3. Commission's assessment

- (465) In relation to a potential distinction, within the overall market for the wholesale supply of diesel and gasoline, between a market for ex-refinery sales and a market for non-retail sales, the Commission notes that the Parties' activities overlap only in the potential market for non-retail sales as the Target's ex-refinery activities are carved out from the Transaction. In addition, MOL's ex-refinery activities in Slovenia consist mainly in supplies to its own network, with limited gasoline and diesel volumes being sold to third parties.
- (466) In light of the above, the Commission considers that the exact product market definition can be left open. The Commission will carry out its assessment considering the narrowest plausible market where the Parties' activities overlap, *i.e.*, the market for non-retail sales of diesel and gasoline and, for the vertical links, it will also take into account the narrowest plausible segments, distinguishing between ex-refinery and non-retail sales.

7.3.2.1.2. Geographic market definition

7.3.2.1.2.1. Commission's precedents

- (467) The market for non-retail sales of diesel and gasoline has been considered to be national in scope or even narrower in certain instances (local). In assessing the geographic scope of the market for non-retail sales, the Commission took into account the following criteria: the availability of storage depots in the country, the scope of the contracts, and the price setting dynamics.⁵⁴³
- (468) In *PKN Orlen / Grupa Lotos*, the Commission considered that the wholesale market for each type of fuel in Poland presented the characteristics of a national market for the following reasons: (i) the limited product flows into and out of Poland; (ii) wholesale customers sourcing fuel locally within Poland; (iii) the significant barriers to import fuel into Poland; (iv) producers of fuels and wholesale suppliers supplying their local markets with higher priority; and (v) significant differences in the wholesale prices of the different type of fuels.

7.3.2.1.2.2. Notifying Party's view

- (469) The Notifying Party considers that, given the specific features of the Slovenian market, the relevant geographic scope of the market for the wholesale supply of diesel and gasoline should be considered wider than national. Specifically, the Notifying Party notes that there is no domestic production in Slovenia, the size of the country is relatively small and the market is very open to fuel imports, resulting in significant cross-border sales. Thus, the Notifying Party considers that the relevant geographic market for the wholesale supply of diesel and gasoline is at least regional, including CEE countries, plus Italy, and potentially even EEA-wide.⁵⁴⁴

7.3.2.1.2.3. Commission's assessment

- (470) The Commission considers that the exact geographic market for the wholesale supply of diesel and gasoline can be left open, both for ex-refinery sales and for non-retail sales.

⁵⁴³ Cases M.1383 – *Exxon/Mobil*; M.4532 – *Lukoil/ConocoPhilips*; and M.3291 – *Preem/Skandinaviska Raffinaderi*.

⁵⁴⁴ Form CO, paragraphs 181-182.

- (471) First, the Commission notes that, first, the product flow in and out of Slovenia is very significant, for both diesel and gasoline, as there is no local production (*i.e.*, none of the wholesalers active in Slovenia have refineries within the country). Slovenia is a hub for the CEE region due to its sea connections (Port of Koper) and short transport roads to neighbouring countries. Based on the Eurostat data provided by the Notifying Party, Slovenia imported 466 000 tonnes of gasoline in 2021, mainly from Austria, Croatia and Italy, and exported 88 000 tonnes of gasoline mainly to Italy, Croatia and Hungary. For diesel, Slovenia imported 2662 000 tonnes, mainly from Greece, Saudi Arabia and Italy and exported 1131 000 tonnes mainly to Austria, Croatia, Italy and Hungary.⁵⁴⁵
- (472) Second, the Commission notes that a significant number of non-retail customers in Slovenia are supplied from depots and refineries located outside of Slovenia. For example, almost [...] of the volumes delivered in 2021 by MOL to non-retail customers located in Slovenia come from depots and refineries located outside of Slovenia (mainly in Hungary and Croatia).⁵⁴⁶
- (473) Third, when assessing the wholesale market for the supply of fuel, the SCPA considered that, given the fact that Slovenia has no oil depot, the wholesale market covers at least the area of Italy, Austria, Croatia, and Hungary.⁵⁴⁷
- (474) Despite the above, a slight majority of respondents to the market investigation that expressed an opinion considers that the market for non-retail sales of motor fuels in Slovenia is national in scope.⁵⁴⁸ Specifically, the market investigation results suggested that wholesale customers prefer sourcing fuels mainly locally within Slovenia and consider it important to have storage capacity in Slovenia.⁵⁴⁹
- (475) As regards ex-refinery sales, the Commission considers that no element in the market investigation points to a geographic scope of the market that would be narrower than national⁵⁵⁰ and the Commission considers that the market is likely broader, encompassing at least Slovenia, Croatia, Italy, and Hungary,⁵⁵¹ and, at the very least, the market would be national. In that respect, the Commission notes that the main retail networks in Slovenia are also supplied from third countries. Regarding OMV Slovenija, the majority of its sourcing needs are supplied by imports by sea, and there are also non-negligible volumes coming directly from Austria (from the OMV Group).⁵⁵² As regards MOL, it sources almost [...] of the fuel sold in Slovenia from its refineries and depots located in Hungary (Szazhalombatta, Pecs, Csepel) and in Croatia (Rijeka, Sisak).⁵⁵³ Another wholesale competitor, that recently significantly

⁵⁴⁵ Form CO, Annex 67.

⁵⁴⁶ Form CO, Annex 79.

⁵⁴⁷ Form CO, Annex 75.

⁵⁴⁸ Non-confidential replies to question 10 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁴⁹ Non-confidential replies to questions 8, 9, 10, 12, and 13 of Questionnaire 5 Wholesale markets – Customers in Slovenia. However, several customers responded that it is not important for them where the supplier has the storage capacity in Slovenia, but it is important that fuel is delivered at the agreed price, to the agreed place, in the desired quantities and within the deadlines.

⁵⁵⁰ Non-confidential replies to questions 9, 10, 11, 12, and 13 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁵¹ The Commission notes that, even considering a geographically broader market definition, encompassing Slovenia, Croatia, Italy, and Hungary, there would be no horizontal overlap in the market for ex-refinery sales, given that the Transaction does not cover the Target's ex-refinery business, which is entirely carved out from the Transaction.

⁵⁵² Form CO, Annex 69.

⁵⁵³ Form CO, Annex 70.

increased its activities in Slovenia, indicated they source mainly from international suppliers *via* the Port of Koper as well as from Italy, Hungary and Croatia.⁵⁵⁴

- (476) In light of the above, the Commission considers that the exact geographic scope of the market for the wholesale supply of diesel and gasoline can be left open. For the competitive assessment, the Commission will assess the ex-refinery and non-retail supply of diesel and gasoline at the level of the narrowest plausible geographic market definition, *i.e.*, national (comprising Slovenia), including and excluding the volumes directly imported.

7.3.2.2. Competitive assessment

7.3.2.2.1. Notifying Party's view

- (477) The Notifying Party submits that the Transaction does not raise any competition concerns in the wholesale market for refined oil products in Slovenia under any plausible market definition. Specifically, the Notifying Party argues that Slovenia is an open market driven by easy access to seaborne imports and by significant re-export activity; there are no barriers to market entry or expansion; the Transaction does not lead to a reduction in the number of independent supply sources in Slovenia; the Parties are not each other's closest competitors; customers have significant buyer power; there is a sufficient level of price competition; and OMV Slovenija's customers are not captive.⁵⁵⁵

7.3.2.2.2. Commission's assessment

- (478) In this section, the Commission will carry out its assessment considering the narrowest possible product and geographic market definitions, *i.e.*, the markets for non-retail sales of diesel and gasoline in Slovenia. However, the Commission points out that if it had to consider the overall market on a broader geographic market definition, as some elements stemming from the market investigation and the market characteristics appear to suggest, the market for the wholesale supply of refined oil products would not be affected neither at EEA level nor at CEE level (including Italy). In the potential EEA market for the wholesale supply of refined oil products, the Parties' combined market share would remain below 20%.⁵⁵⁶ This would be the case also considering a hypothetical regional CEE market (including Italy).⁵⁵⁷
- (479) The Slovenian non-retail markets for diesel and gasoline are rather small in absolute numbers (1 340 000 tonnes for diesel and only 370 000 tonnes for gasoline in 2021) and a large part of the demand in these markets is represented by the main retail networks, covered, to a large extent, by their own integrated wholesale activities. The remaining demand for diesel and gasoline (approximately 272 000 tonnes for diesel and 8 000 tonnes for gasoline) relates to white pumpers, resellers and some end-users, such as construction companies.⁵⁵⁸

⁵⁵⁴ Non-confidential minutes of call with a competitor on 28 January 2022.

⁵⁵⁵ Form CO, paragraphs 562-565.

⁵⁵⁶ Specifically, for *gasoline*, MOL's market share (considering only non-intragroup sales) amounts to [0-5]% and the Target's market share amounts to less than [0-5]% in 2021. For *diesel*, MOL's market share (considering only non-intragroup sales) amounts to [0-5]% market share and the Target's market share amounts to less than [0-5]% in 2021.

⁵⁵⁷ Specifically, for *gasoline*, MOL's market share (considering only non-intragroup sales) amounts to [5-10]% and the Target's market share amounts to less than [0-5]% in 2021. For *diesel*, MOL's market share (considering only non-intragroup sales) amounts to [5-10]% and the Target's market share amounts to less than [0-5]% in 2021.

⁵⁵⁸ Form CO, paragraph 563.

- (480) Post-Transaction, the market structure for the wholesale supply of refined oil products (diesel and gasoline) in Slovenia (including imports from abroad) would be the following as set out in recitals (481) and (482).
- (481) For *non-retail sales of diesel*, the Parties' combined market share would amount to [30-40]% in 2021, which includes an increment brought by MOL of [10-20]%.⁵⁵⁹ While the increment is quite significant, the Parties' market share will remain below 40%. The market would continue to be led by Petrol (with a [50-60]% market share). Leitner, who significantly increased its activities in the last years, would hold a [5-10]% market share.
- (482) For *non-retail sales of gasoline*, the Parties' combined market share would amount to [50-60]% in 2021, with an increment brought by MOL of [10-20]%⁵⁶⁰, facing Petrol with [40-50]% market share. The very limited number of suppliers of gasoline currently active in Slovenia appears to be due to the very small size of the non-captive non-retail gasoline market, rather than to a structural obstacle in the market to accept more dynamic competition.⁵⁶¹
- (483) The Commission is of the view that the Transaction would not give rise to a significant impediment to effective competition in the markets for the wholesale supply of gasoline and diesel in Slovenia for the following reasons:
- (484) *First*, the Commission notes that MOL's activities are fairly limited, especially when looking at the activities carried out in Slovenia using only Slovenian storage. For gasoline, MOL supplies non-retail customers in Slovenia only from infrastructures located abroad and without relying on storage space in Slovenia.⁵⁶² As a result, for customers wishing to source from Slovenian storage depots, MOL is currently not an option. For diesel, MOL imports between [...] of the volumes supplied to non-retail customers; these volumes are delivered without using Slovenian storage. Excluding volumes of diesel and gasoline imported from outside Slovenia without relying on storage space in Slovenia, MOL's market share would be smaller (around [10-20]%).
- (485) *Second*, the new entity will continue to face competition from several players that source mostly from the sea and supply the Slovenian market using their storage installations provided by Luka Koper:⁵⁶³
- (a) Petrol will continue to be the largest importer of motor fuels in Slovenia and the largest supplier on the wholesale market. Petrol will also continue to control key storage facilities in Slovenia importing fuel by sea (Instalacija at Sermin) and from inland sources (Zalog, Race, Lendava).⁵⁶⁴ Thanks to Instalacija, Petrol has access to key infrastructures and logistics facilities to import fuel into Slovenia. When excluding imports, Petrol's market share reaches 63% for diesel and 67% for gasoline.⁵⁶⁵ In that respect, the Transaction will not modify to a significant extent the pre-existing market structure.
 - (b) Leitner expanded its activities in the Slovenian market for the supply of diesel and achieved a market share of 6% in the last few years. Leitner does not have its own storage capacities, but rents storage capacity in Slovenia from Luka

⁵⁵⁹ MOL's market share includes also intra-group sales to INA Slovenija.

⁵⁶⁰ MOL's market share includes also intra-group sales to INA Slovenija.

⁵⁶¹ Form CO, paragraph 563; and non-confidential minutes of call with a competitor on 28 January 2022.

⁵⁶² Notifying Party's reply to RFI 32.

⁵⁶³ *Ibid.*

⁵⁶⁴ Form CO, paragraphs 590-600.

⁵⁶⁵ Notifying Party's reply to RFI 32.

Koper. Based on its explanations, it appears that Leitner could easily increase its supply of diesel volumes in Slovenia or start supplying gasoline. During the market investigation, Leitner explained that *“from the supply side, entering the Slovenian market would however not be an issue as companies like Leitner are always willing to offer fuel and given Slovenia’s size, it is possible for companies located outside of Slovenia to supply Slovenian filling stations”*. It added that *“expanding its product offering to supply also gasoline to the Slovenian retail market would not be a problem per se, but the supply would have to be done from the Austrian terminal”*.⁵⁶⁶

- (486) In addition, post-Transaction, the OMV Group will maintain all its infrastructures abroad (refineries and depots) and would continue to be able to supply non-retail customers in Slovenia.⁵⁶⁷ The OMV Group will not undertake any non-compete obligation preventing it from supplying wholesale customers in Slovenia, therefore, the quantities currently supplied by OMV Group, in particular to OMV Slovenija, on the wholesale market in Slovenia will remain available in the market post-Transaction as directly supplied by the OMV Group.
- (487) Overall, the Commission notes that access to gasoline does not appear to be difficult. In that respect, a customer explained that *“in this region there is a surplus of gasoline availability and there should not be a problem finding the alternative source of supply”*.⁵⁶⁸ Moreover, the Commission understands that the Parties are not indispensable trading partners as non-retail customers can source the majority or the totality of their needs from other players such as Petrol, or Leitner, which does not appear to face capacity constraints to increase the volumes it delivers in Slovenia⁵⁶⁹.
- (488) *Third*, the market investigation has shown that the Parties do not have a significant competitive advantage in Slovenia in terms of infrastructure *vis-à-vis* their competitors. While local storage appears to be an important element for several non-retail customers,⁵⁷⁰ the Commission notes that the Parties do not have their own storage infrastructure in Slovenia and already import significant volumes from abroad. Outside of Petrol, the only company that owns and operates storage in Slovenia is the port operator, Luka Koper. The capacity of Luka Koper (203,000 m³) is, however, much smaller than the capacity at Instalacija (480,000 m³). Storage space is rented out at Luka Koper to Leitner, MOL, and OMV Slovenija.⁵⁷¹ OMV Slovenija also rents some storage capacities from Petrol. However, the Parties do not have long term agreements with Luka Koper or Petrol, and the lease contracts they currently have in place either expire shortly or can be terminated upon short prior notice, leaving the possibility to Petrol or to Luka Koper to rent out storage capacities to other players.⁵⁷² One competitor even pointed out that *“MOL could have a problem of capacity, since Petrol controls most of the storage and there are currently export restrictions out of Austria”*.⁵⁷³

⁵⁶⁶ Non-confidential minutes of call with a competitor on 28 January 2022.

⁵⁶⁷ The storage contracts entered into by OMV Slovenija for the Slovenian market will remain with OMV Slovenija post-Transaction and, hence, with the Notifying Party.

⁵⁶⁸ Non-confidential replies to question 7 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁶⁹ Non-confidential minutes of call with a competitor on 28 January 2022.

⁵⁷⁰ Non-confidential replies to questions 9, 10, 12, and 13 of Questionnaire 2 Retail Markets – Customers in Slovenia.

⁵⁷¹ Form CO, paragraph 481.

⁵⁷² Form CO, Annex 73.

⁵⁷³ Non-confidential minutes of call with a competitor on 23 September 2022.

- (489) *Fourth*, in relation to both gasoline and diesel, the market investigation results indicate that MOL does not play an important role in any of these markets in Slovenia, whereas a number of customers identified Petrol and OMV Slovenija as the most competitive wholesale suppliers, thanks to their brand and network coverage. Moreover, the market investigation results suggest that MOL and OMV Slovenija are not each other's closest competitors, while Petrol seems to be much closer to OMV Slovenija.⁵⁷⁵ This is also confirmed by the fact that the Parties have limited overlapping customers.⁵⁷⁶
- (490) *Finally*, none of the customers who responded to the market investigation indicated that they expect the Transaction to have a detrimental impact on the markets for the wholesale supply of gasoline and diesel in Slovenia.⁵⁷⁷ The Parties' competitors did not raise substantiated concerns in relation to the non-retail supply of diesel and gasoline.⁵⁷⁸ In this respect, Leitner explained that "*Leitner further does not expect a significant change for the wholesale structure of the market as the Transaction would increase the Parties' joined capacities but would not lead to opening new sources. Moreover, Leitner also has their terminal in Graz and is therefore in a good wholesale position to supply the Slovenian market*".⁵⁷⁹
- (491) In light of the above, the Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the markets for the wholesale supply of gasoline and diesel in Slovenia.

7.3.3. *Non-retail supply of heating oil (Slovenia)*

- (492) Heating oil consists of a mixture of petroleum-derived hydrocarbons in the 14- to 20-carbon atom range that condenses between 250 and 350 °C during oil refining. Heating oil condenses at a lower temperature than petroleum jelly, bitumen and lubricating oil, but at a higher temperature than kerosene which condenses between 160–250 °C. Heavy (C20+) hydrocarbons (heavy oil) condense between 340–400 °C.

7.3.3.1. Product market definition

7.3.3.1.1. Commission's precedents

- (493) As was already mentioned in recital (331) concerning motor fuels, the Commission has, in the past, found that different stages of the distribution chain of refined oil products – in particular, ex-refinery sales, non-retail sales and retail sales – are separate product markets.⁵⁸⁰
- (494) Concerning the separation per consumer group, in a previous decision the Commission considered non-retail sales as one relevant market, without specifying the consumer group.⁵⁸¹

⁵⁷⁴ The Commission understands that, following the start of Russia's war of aggression against Ukraine and the fuel shortages this has caused, Austria imposed certain export restrictions over fuel wholesalers to maintain all fuel stock within Austria and avoid the risk of running out of fuel, given the already limited amount of fuel available. The Commission understands, however, that these restrictions were only temporary.

⁵⁷⁵ Non-confidential replies to questions 21 and 22 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁷⁶ Notifying Party's reply to RFI 28, question 2. See also Annex Q07.MOL.2 and Annex Q07.OMV.1.

⁵⁷⁷ Non-confidential replies to question 35 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁷⁸ Non-confidential replies to Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁵⁷⁹ Non-confidential minutes of call with a competitor on 28 January 2022.

⁵⁸⁰ Case M.6167 – *RWA/OMV Warme*, paragraph 16.

⁵⁸¹ Case M.6167 – *RWA/OMV Warme*, paragraph 21.

(495) As to a separation between different types of heating oil, e.g. heating oil light ('HOL'), heating oil extra light ('HOEL') and heating oil heavy ('HOH'), the Commission has in some cases defined a single market for retail that includes all types of heating oils.⁵⁸² However, in other precedents, the Commission also confirmed a separate market for the non-retail sale of light heating oil, typically used by companies or domestic households.⁵⁸³ In *PKN Orlen / Grupa Lotos*, the Commission considered that a sub-division of the light heating oil market into HOL and HOEL was not applicable in Poland,⁵⁸⁴ however HOL constituted a separate market distinct from heavy fuel oil ('HFO').⁵⁸⁵

7.3.3.1.1.1. Notifying Party's view

(496) The Notifying Party considers that it might be relevant to distinguish for the non-retail market between light heating oil (consisting of HOL and HOEL) and heavy fuel oil (HFO). As regards a potential segmentation of light heating oil into HOL and HOEL, the Notifying Party is of the view that for the purposes of the Transaction, the exact market definition can be left open, as both Parties sell only HOEL in Slovenia.⁵⁸⁶

7.3.3.1.1.2. Commission's assessment

(497) In the present case, the Commission understands that neither MOL nor OMV Slovenija deliver ex-refinery HOEL in Slovenia. All sales are on the non-retail segment. In addition, the Parties do not sell HOL.⁵⁸⁷

(498) Moreover, the results of the market investigation confirm that it is relevant to consider heating oil as a separate market⁵⁸⁸ but are very inconclusive on the necessity to further distinguish between HOL and HOEL.⁵⁸⁹

(499) For the purposes of this Decision, the Commission considers that the exact market definition can be left open, as, regardless of the market definition, the Transaction would not give rise to a significant impediment to effective competition even when considering the narrowest plausible segmentation that is the non-retail supply of HOEL, which is the only segment where the Parties' activities overlap.

7.3.3.1.2. Geographic market definition

7.3.3.1.2.1. Commission's precedents

(500) In previous decisions, the Commission has identified various elements suggesting that competition in non-retail distribution of refined oil products was national in

⁵⁸² Case M.5637 – *Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings*, paragraph 38.

⁵⁸³ Cases M.5781 – *Total Holdings Europe SAS/ERG SPA/JV*, paragraph 12 and M.5445 – *Mytilineos/Motor Oil/Corinthos Power*, paragraph 14.

⁵⁸⁴ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 170.

⁵⁸⁵ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 171. As there is no overlap on the market for the supply of HFO as the Target is not active, this market will not be considered further (Form CO, paragraph 258).

⁵⁸⁶ Form CO, paragraph 111.

⁵⁸⁷ Notifying Party's reply to RFI 31.

⁵⁸⁸ Non-confidential replies to question 43 of Questionnaire 5 Wholesale markets – Customers in Slovenia and question 41 of Questionnaire 4 Wholesale markets – Competitors in Slovenia.

⁵⁸⁹ Non-confidential replies to question 44 of Questionnaire 5 Wholesale markets – Customers in Slovenia and question 42 of Questionnaire 4 Wholesale markets – Competitors in Slovenia.

scope, however, in most instances it has not found it necessary to reach a firm view on this issue.⁵⁹⁰

7.3.3.1.2.2. Notifying Party's view

(501) The Notifying Party submits that there is a (broader than national) regional market for non-retail sales of HOEL, but the market is at least national.⁵⁹¹

7.3.3.1.2.3. Commission's assessment

(502) In the present case, the results of the market investigation are rather mixed regarding the exact geographic scope of the non-retail sale of HOEL, whether it is national or wider than national.⁵⁹²

(503) For the purposes of this Decision, the exact market definition can be left open, as regardless of the market definition, the Transaction would not give rise to a significant impediment of effective competition even when considering the narrowest plausible segmentation that is national (Slovenia). As significant volumes of HOEL are imported in Slovenia without reliance on Slovenian storage, the Commission will assess the situation, with and without the imported volumes.

7.3.3.2. Competitive assessment

7.3.3.2.1. Notifying Party's view

(504) The Notifying Party considers that the Transaction will not have any appreciable effect on the Slovenian market as the Parties' market shares remain moderate with Petrol dominating the market.

7.3.3.2.2. Commission's assessment

(505) Both MOL and the Target are only selling HOEL in Slovenia to distributors who are then selling it to the end users.

(506) On the Slovenian market for non-retail sales of HOEL, the combined market share of the Parties would be below 30% on a market largely dominated by Petrol, and with Leitner as a challenger that recently significantly expanded its activities on the Slovenian market.

Table 11: Market shares of the Parties and their main competitors for the non-retail sales of HOEL in Slovenia (2018-2021)

	2021	2020	2019	2018
MOL (including intragroup)	[10-20]%	[10-20]%	[10-20]%	[10-20]%
OMV Slovenija	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Petrol	[60-70]%	[60-70]%	[60-70]%	[60-70]%
Leitner	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Others	[5-10]%	[0-5]%	[5-10]%	[5-10]%

Source: Form CO, Table 44.

⁵⁹⁰ Cases M.3110 – OMV/BP (Southern Germany Package), paragraphs 23-24; M.4002 – OMV/Aral CR, paragraphs 15-22; and M.9014 – PKN Orlen/Grupa Lotos.

⁵⁹¹ Form CO, paragraph 197.

⁵⁹² Non-confidential replies to question 45 of Questionnaire 5 Wholesale markets – Customers in Slovenia and question 46 of Questionnaire 4 Wholesale markets – Competitors in Slovenia.

- (507) The Commission notes that MOL Group has supplied a very significant part of HOEL supply to non-retail customers from abroad (between [50-60]% in 2018 and [30-40]% in 2021). OMV Slovenia has supplied [...] of its HOEL volumes directly from [a European country] and [...] from [another European country] in 2021.⁵⁹³ On the contrary, the Commission understands from the Notifying Party that both Petrol and Leitner deliver non-retail customers mostly from their depots located at Koper. As a result, when excluding imports, the Parties' market shares are lower ([5-10]% for MOL, [10-20]% for OMV) whereas Petrol has 69% and Leitner 5%.⁵⁹⁴
- (508) Furthermore, the majority of the respondents that expressed an opinion in the market investigation consider that in the case of a price increase, they would have sufficient alternatives to switch suppliers.⁵⁹⁵ In that respect, one customer explained: "*We would turn to other suppliers in the market.*"⁵⁹⁶
- (509) In the same line, the majority of the respondents that expressed an opinion in the market investigation consider that post-Transaction the prices will remain the same⁵⁹⁷ as well as the intensity of competition on the market.⁵⁹⁸
- (510) Finally, as there is no production capacity in Slovenia, all HOEL is imported. As a result, thanks to its production capacities located abroad, OMV Group would continue to have the possibility to sell to non-retail customers in Slovenia.
- (511) As a result, the Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the market for the non-retail sales of HOEL in Slovenia.

7.3.4. Wholesale supply of bitumen (Slovenia)

7.3.4.1. Market definition

7.3.4.1.1. Product market definition

7.3.4.1.1.1. Commission's precedents

- (512) The Commission has previously considered that there is a separate product market for the wholesale of bitumen as it has a distinct set of uses (e.g. road construction) and a small number of customers (independent resellers) which clearly differentiates it from other wholesales of fuel products.⁵⁹⁹ Due to the high supply-side substitutability, the Commission considered in some cases that the various types of bitumen (standard bitumen, bitumen emulsions and modified bitumen) belong to one single product market,⁶⁰⁰ although more recently the Commission also considered further segmentation to standard bitumen, modified bitumen and industrial bitumen.⁶⁰¹

⁵⁹³ Notifying Party's reply to RFI 32.

⁵⁹⁴ Notifying Party's reply to RFI 32.

⁵⁹⁵ The overall majority did not have an opinion. Non-confidential replies to question 46 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁹⁶ The overall majority did not have an opinion. Non-confidential replies to question 46.1 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁹⁷ The overall majority did not have an opinion. Non-confidential replies to question 47 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁹⁸ The overall majority did not have an opinion. Non-confidential replies to question 48 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁵⁹⁹ Cases M.5005 – *Galp Energia/ExxonMobil Iberia*, paragraph 19 and M.5637 – *Motor Oil (Hellas) Corinth Refineries/Shell Overseas Holdings*, paragraphs 48-50.

⁶⁰⁰ Case M.5005 – *Galp Energia/ExxonMobil Iberia*, paragraph 19.

⁶⁰¹ Case M.9952 – *PKN Orlen/PGNiG*, paragraph 29.

- (513) In the Commission decision in Case M.9014 – *PKN Orlen/Grupa Lotos*, the Commission considered that the results of the market investigation supported the need to distinguish different product markets for the supply of bitumen, and considered that standard bitumen, modified bitumen and industrial bitumen constituted separate markets.⁶⁰² The Commission considered in the same case that there was no need to consider distinct sales channels (i.e. sales to resellers and sales to end customers) as separate markets.⁶⁰³

7.3.4.1.1.2. Notifying Party's view

- (514) As explained in more detail in recital (519), the Notifying Party is of the view that the Transaction does not reduce the number of independent bitumen supply sources in Slovenia and, as a result, the exact market definition can be left open, given that the Transaction will not have any appreciable effect on the bitumen market(s) in Slovenia.

7.3.4.1.1.3. Commission's assessment

- (515) In the present case, the results of the market investigation indicate that it is appropriate to further segment the wholesale supply of bitumen by type of bitumen or by use – in particular, the majority of respondents who expressed an opinion confirmed this.⁶⁰⁴
- (516) For completeness, a potential further segmentation of the wholesale market for the supply of bitumen by distribution channel was not explored, as in Case M.9014 – *PKN Orlen/Grupa Lotos* (point 19.3) the Commission considered it was unnecessary to distinguish between the different distribution channels.
- (517) For the purpose of this Decision, the exact delineation of the relevant product market in this case can be left open, as the Transaction does not give rise to a significant impediment to effective competition under any plausible market definition (i.e., considering the wholesale supply of bitumen (standard bitumen; modified bitumen; and industrial bitumen) as separate product markets.

7.3.4.1.2. Geographic market definition

7.3.4.1.2.1. Commission's precedents

- (518) In the past, the Commission considered this market to be national in scope since prices are homogeneous and contracts are concluded on a national basis.⁶⁰⁵ However, despite the high cost of transportation, the Commission also considered in some cases the wholesale market for bitumen to be possibly wider in geographic scope, i.e. regional (wider than national).⁶⁰⁶ In the Commission decision in Case M.9014 – *PKN Orlen/Grupa Lotos*, the Commission found that the market can be defined as national, while local elements of competition should be factored into the competitive assessment.⁶⁰⁷

⁶⁰² Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 1423.

⁶⁰³ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 1471.

⁶⁰⁴ Non-confidential replies to question 49 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶⁰⁵ Cases M.727 – *BP/Mobil*; M.3543 – *PKN Orlen/Unipetrol*, paragraphs 21-22; M.3516 – *Repsol/Shell Portugal*, paragraphs 13-14; and M.5781 – *Total Holdings Europe SAS/ERG SPA/JV*, paragraphs 40-43.

⁶⁰⁶ Cases M.5005 – *Galp Energia/ExxonMobil Iberia*, paragraph 37 and M.7849 – *MOL Hungarian Oil And Gas/ENI Hungaria/ENI Slovenija*, paragraphs 35-38.

⁶⁰⁷ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraphs 184-185.

7.3.4.1.2.2. Notifying Party's view

- (519) The Notifying Party agrees with the Commission's approach of a regional market for the wholesale of bitumen that – given the size of Slovenia – extends beyond the country's borders, considering in particular that there is no bitumen production in Slovenia.

7.3.4.1.2.3. Commission's assessment

- (520) Although a majority of respondents to the market investigation who expressed a view indicated that the geographic scope of the market for the sale of bitumen is wider than national,⁶⁰⁸ the Commission will conduct the competitive assessment on the conservative basis of a national (i.e. Slovenia) geographic scope. However, the Commission considers that the exact geographic market definition can be left open for the purposes of this Decision, as the Transaction does not give rise to a significant impediment to effective competition under any plausible geographic market definition.

7.3.4.2. Competitive assessment

- (521) The Transaction leads to a horizontally affected market in the wholesale supply of bitumen in Slovenia, and also in the market for the wholesale supply of standard bitumen in Slovenia, as illustrated by the market shares presented in recital (526).
- (522) MOL sells standard and modified bitumen in Slovenia to two resellers, [reseller #1] and [reseller #2], as well as to [several] end customers. The majority of MOL's bitumen sales are sold to [reseller #1], which resells the volumes sourced from MOL to end-customers.
- (523) OMV Slovenija supplies [details on the Target's customers and distributors of bitumen]. Further, OMV Slovenija does not have any bitumen production or own supply sources with volume take obligations but acts as a local outlet for the production of the OMV Group which will remain post-Transaction on the market as a market player independent from the new entity. In other words, post-Transaction, OMV Group will be able to continue selling bitumen products independently in Slovenia.

7.3.4.2.1.1. Notifying Party's view

- (524) The Notifying Party submits that the Transaction does not reduce the number of independent bitumen supply sources in Slovenia, and that MOL Group does not appreciably increase its market position on the Slovenian bitumen markets as a result of the Transaction given that it neither acquires additional supply sources nor customers that would be bound by any volume take obligations.⁶⁰⁹

7.3.4.2.1.2. Commission's assessment

- (525) Based on the available evidence, the Commission considers that the Transaction is unlikely to significantly impede effective competition in the market for the wholesale supply of bitumen in Slovenia.
- (526) In particular, the increment brought by the Target under any plausible product market definition is always below 5%. Specifically, in the market for: (i) wholesale supply of bitumen in Slovenia in 2021, MOL had a market share of [40-50]% while OMV

⁶⁰⁸ Non-confidential replies to question 50 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶⁰⁹ Form CO, paragraph 116.

Slovenija's share amounted to [0-5]%;⁶¹⁰ (ii) sales of standard bitumen in Slovenia in 2021, MOL had a market share of [50-60]% while OMV Slovenija's share amounted to less than 5%;⁶¹¹ (iii) modified bitumen in Slovenia, MOL had a market share of [0-5]% while OMV Slovenija's share amounted to less than 5%.⁶¹² The Commission considers that such limited increments make it unlikely that competition concerns will arise on any of these markets as a result of the Transaction. Furthermore, as the Notifying Party submits, OMV Group's supply sources are not part of the Transaction and OMV Group will remain active in the market for the wholesale supply of bitumen in Slovenia.

- (527) This was also confirmed by the market investigation. All the respondents that expressed an opinion stated that post-Transaction they would have alternative bitumen suppliers at the wholesale level to switch to in the case that the new entity decided to increase prices.⁶¹³ Further, when asked about the impact the Transaction could have on bitumen prices, a large majority of respondents either did not have an opinion or stated that prices were likely to remain unchanged.⁶¹⁴ One respondent also confirmed that the Transaction would have little impact in this market given that, post-Transaction, both MOL and OMV Group will remain active on the bitumen market in Slovenia.⁶¹⁵
- (528) In light of the above, Commission considers that the Transaction does not give rise to a significant impediment to effective competition in the market for wholesale supply of bitumen in Slovenia, regardless of the exact market definition upheld.

7.3.5. *Non-retail supply of diesel and gasoline in Croatia*

7.3.5.1. Market definition

7.3.5.1.1. Product market definition

7.3.5.1.1.1. Commission's precedents

- (529) In its past decisions, the Commission considered the market for wholesale distribution of diesel and gasoline to be potentially segmented according to the size and the characteristics of the sale. Specifically, the Commission considered the identification of a market for ex-refinery sales and a separate market for non-retail sales. Ex-refinery sales are based on single delivery purchases in high volume lots sold directly by refineries at the refinery gate or delivered by primary transport to customers' terminals or storage facilities. Non-retail sales, on the other hand, are sales of smaller volume from the suppliers' inland storage facilities delivered to customers by secondary transport (generally by truck). This plausible market differentiation has often been left open. For instance, recently, in the Commission decision in Case M.9014 *PKN Orlen/Grupa Lotos*, the Commission found that a distinction between the market for ex-refinery sales and non-retail sales was not pertinent for Poland.⁶¹⁶

⁶¹⁰ Form CO, Table 51.

⁶¹¹ Form CO, Table 52.

⁶¹² Form CO, Table 53.

⁶¹³ Non-confidential replies to question 51 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶¹⁴ Non-confidential replies to question 52 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶¹⁵ Non-confidential replies to question 51 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶¹⁶ Cases M.7311 – *MOL ENI Ceska/ENI Romania/ENI Slovensko*; M.6935 – *Argos/Sopetral*; and M.9014 – *PKN Orlen/Grupa Lotos*.

7.3.5.1.1.2. Notifying Party's view

- (530) The Notifying Party is of the view that, for the purposes of the present decision, the exact product market definition can be left open as the Transaction does not lead to a significant impediment to effective competition on any plausible market definition on the wholesale markets in Croatia.⁶¹⁷

7.3.5.1.1.3. Commission's assessment

- (531) In relation to a potential distinction, within the overall market for the wholesale supply of diesel and gasoline, between a market for ex-refinery sales and a market for non-retail sales, the Commission notes that OMV Slovenija is only present in the non-retail segment of the market in Croatia and supplies mainly diesel and marginal volumes of gasoline to only a few Croatian customers.⁶¹⁸
- (532) In light of the above, the Commission considers that the exact product market definition can be left open. The Commission will carry out its assessment considering the narrowest plausible market where the Parties' activities overlap, *i.e.*, the markets for non-retail sales of diesel and gasoline.

7.3.5.1.2. Geographic market definition

7.3.5.1.2.1. Commission's precedents

- (533) The Commission has in the past considered the markets for non-retail sales of diesel and gasoline to be national in scope or even narrower in certain instances (local or regional within a country). In assessing the geographic scope of the market for non-retail sales, the Commission took into account the following criteria: the availability of storage depots in the country, the scope of the contracts, and the price setting dynamics.⁶¹⁹
- (534) In its Decision in Case M.9014 – *PKN Orlen / Grupa Lotos*, the Commission considered that the wholesale market for each type of fuel in Poland presented the characteristics of a national market for the following reasons: (i) the limited product flows into and out of Poland; (ii) wholesale customers sourcing fuel locally within Poland; (iii) the significant barriers to import fuel into Poland; (iv) producers of fuels and wholesale suppliers supplying their local markets with higher priority; and (v) significant differences in the wholesale prices of the different type of fuels.

7.3.5.1.2.2. Notifying Party's view

- (535) The Notifying Party considers that the relevant geographic market for non-retail sales of diesel and gasoline is broader than national, and the regional market covers CEE countries and Italy.⁶²⁰

7.3.5.1.2.3. Commission's assessment

- (536) The Commission considers that the exact geographic market for the wholesale supply of diesel and gasoline can be left open for non-retail sales.
- (537) The Commission notes that, first, the product flow in and out of Croatia is very significant, for both diesel and gasoline. Croatia is an open market that is supplied on

⁶¹⁷ Form CO, paragraphs 718-720.

⁶¹⁸ Form CO, paragraphs 718 *et seq.*

⁶¹⁹ Cases M.1383 – *Exxon/Mobil*; M.4532 – *Lukoil/ConocoPhilips*; and M.3291 – *Preem/Skandinaviska Raffinaderi*.

⁶²⁰ Form CO, paragraphs 721-722.

top of domestic production by INA's Rijeka refinery mainly, by seaborne import via various sea ports, as well as by rail and road supplies from neighbouring countries.⁶²¹

- (538) Moreover, there is significant storage capacity available in Croatia, which further facilitates entry and expansion for both domestic and foreign wholesale suppliers.⁶²²
- (539) In line with the above, the Croatian Competition Authority found in its recent decision relating to the acquisition by Petrol of Crodux Derivati Dva d.o.o. that the wholesale 'petrol products market' in Croatia is open and easily accessible to international competition, meaning that there are no significant barriers to entry for potential new entrants and no barriers to expansion that would impede the growth of the already existing participants in the market.⁶²³
- (540) As regards ex-refinery sales, the Commission considers that no element in the market investigation points to a geographic scope of the market that would be narrower than national⁶²⁴ and, as a result, the Commission considers that the market is likely broader, encompassing at least Slovenia, Croatia, Italy, and Hungary,⁶²⁵ and, at the very least, the market would be national.
- (541) In light of the above, the Commission considers that the exact geographic scope of the market for the wholesale supply of diesel and gasoline can be left open. The Commission will assess the ex-refinery and non-retail supply of diesel and gasoline at the level of the narrowest plausible geographic market definition, *i.e.*, national (comprising Croatia), including imports into Croatia as all volumes supplied in this country by OMV Slovenija are imported (OMV Slovenija does not rely on local storage to supply the Croatian market).

7.3.5.2. Competitive assessment

- (542) For the purposes of the competitive assessment carried out in this Section, the Commission notes that the Parties' activities horizontally overlap in Croatia in the markets for non-retail sales of diesel and gasoline.

7.3.5.2.1. Notifying Party's view

- (543) The Notifying Party submits that the Transaction does not raise any competition concerns in the wholesale market for refined oil products in Croatia under any plausible market definition. Specifically, the Notifying Party argues that, in Croatia, OMV Slovenija has a very marginal presence, and it does not have any local presence via infrastructure, or sales force. Moreover, OMV Slovenija does not have access to fuel sources, which are independent from the OMV Group. The OMV Group, hence, will remain in the market as an independent competitor post-Transaction.⁶²⁶

⁶²¹ Form CO, paragraphs 723-724.

⁶²² Form CO, paragraph 725.

⁶²³ See the press release of the Croatian Competition Authority dated 7 July 2021 regarding the approval of the transaction at: <https://www.aztn.hr/en/cca-approves-two-mergers-petrol-d-d-crodux-derivati-dva-d-o-o-and-iskra-d-o-o-elka-d-o-o/>.

⁶²⁴ Non-confidential replies to questions 9, 10, 11, 12, and 13 of Questionnaire 5 Wholesale markets – Customers in Slovenia.

⁶²⁵ The Commission notes that, even considering a geographically broader market definition, encompassing Slovenia, Croatia, Italy, and Hungary, there would be no horizontal overlap in the market for ex-refinery sales, given that the Transaction does not cover the Target's ex-refinery business, which is entirely carved out from the Transaction.

⁶²⁶ Form CO, paragraph 720.

7.3.5.2.2. Commission's assessment

- (544) For the purposes of the competitive assessment carried out in this Section, the Commission notes that the Parties' activities horizontally overlap in Croatia in the markets for non-retail sales of diesel and gasoline.
- (545) In the Croatian market for non-retail sales of gasoline and diesel, the new entity would hold high or very high market shares ([60-70]% for diesel and [30-40]% for gasoline) and the competitors (such as Petrol, Coral Croatia and AGS) are much smaller.⁶²⁷ However, the Commission notes that this relates to a pre-existing situation where MOL through INA is the only player owning and operating a refinery in Croatia and the Transaction does not change the competitive structure of the market.
- (546) *First*, the increment and the increase of market concentration are very limited as OMV Slovenija has a market share of [0-5]% for diesel and [0-5]% for the non-retail supply of gasoline.⁶²⁸
- (547) *Second*, OMV Slovenija's non-retail activities are marginal. OMV Slovenija does not have any infrastructure or sales force in Croatia, and it supplies only [details on the Target's activities].⁶²⁹ [Details on the Target's activities].⁶³⁰
- (548) *Third*, OMV Group will continue to be able to sell diesel and gasoline to non-retail customers in Croatia, especially from Austria.
- (549) *Fourth*, the market investigation results confirmed that many customers do not see OMV Slovenija as a particularly relevant player in the market; some customers are not even aware of OMV Slovenija's presence in Croatia.⁶³¹ Customers also stressed that there are other competitors in Croatia, such as Petrol (including Crodex), Coral Croatia, and ASG.⁶³²
- (550) *Finally*, the majority of customers indicated that the Transaction will have a neutral impact on the market for wholesale supply of refined oil products in Croatia, especially in terms of price, where customers stress that there will be no impact.⁶³³
- (551) In light of the above, the Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the markets for the non-retail supply of gasoline and diesel in Croatia.

7.3.6. Non-retail supply of heating oil (Croatia)

7.3.6.1. Market definition

7.3.6.1.1. Product market definition

- (552) The Notifying Party considers that the same considerations described in Section 7.3.2.1.1.3 apply also to the sale of HOEL in Croatia. The Parties' activities

⁶²⁷ For diesel, Petrol holds a 21% market share (including also Crodex), Coral Croatia holds a 3% market share, and AGS holds a 2% market share. For gasoline, Petrol holds a 23% market share (including also Crodex), Coral Croatia holds a 4% market share, AGS holds a 2% market share, and Etradex holds a 1% market. In the absence of available information, the competitors' market shares do not distinguish between intragroup and sales to third parties.

⁶²⁸ Form CO, Annex 81.

⁶²⁹ Form CO, paragraph 728.

⁶³⁰ Form CO, paragraph 729.

⁶³¹ Non-confidential replies to question 16.1 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶³² Non-confidential replies to question 19.1 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶³³ Non-confidential replies to questions 13, 14, 16, 22 and 23 of Questionnaire 7 to Customers in Croatia.

overlap only in the non-retail sale of HOEL. Neither MOL nor OMV Slovenija has ex-refinery sales of heating oil in Croatia.

- (553) As is the case for Slovenia, the results of the market investigation confirm that in Croatia it is appropriate to consider that the non-retail sale of heating oil constitutes a separate product market, regardless of the consumer group.⁶³⁴ The Commission understands that there is no sale of heating oil light in Croatia.⁶³⁵
- (554) The Commission considers that the exact delineation of the relevant market in relation to the non-retail supply of heating oil may be left open in this case, as the Transaction does not give rise to anticompetitive non-coordinated effects under any plausible market definition and the Commission will make the assessment on the narrowest plausible market definition, that is for the non-retail supply of HOEL.

7.3.6.1.2. Geographic market definition

- (555) The Notifying Party considers that similarly to Slovenia the market in Croatia is at least national and potentially broader than national.⁶³⁶
- (556) As for Slovenia, the results of the market investigation confirm that in Croatia the market is at least national, with some respondents even consider that it is wider than national.⁶³⁷
- (557) The Commission considers that the exact delineation of the relevant market in this case may be left open, as the Transaction does not give rise to anticompetitive non-coordinated effects under any plausible market definition and the Commission will make the assessment on the narrowest plausible market definition, which is the non-retail supply of HOEL at a national level.⁶³⁸

7.3.6.2. Competitive assessment

- (558) The Notifying Party considers that in view of the very limited market share and presence of OMV Slovenija in Croatia with regard to HOEL sales, the Transaction does not have anticompetitive effects.⁶³⁹
- (559) On the Croatian market for the non-retail sale of HOEL, the Notifying Party has a very high market share ([70-80]% in 2021, through INA, quite stable over the last 3 years⁶⁴⁰). However, the Commission notes that this relates to a pre-existing situation where MOL, through INA, is the main producer and supplier of heating oil in Croatia. The Transaction does not change the competitive structure of the market for the reasons set out in the following recitals.
- (560) *First*, as explained by the Notifying Party, on the non-retail supply of HOEL in Croatia, the Target's market share is negligible ([0-5]%) and in 2020-2021 it only supplied [several] customers, showing its very limited involvement in this market.⁶⁴¹
- (561) *Second*, the Target does not have any infrastructure, storage or sales force in Croatia. Hence these sales appear quite incidental and relate more to its Slovenian activity as

⁶³⁴ Non-confidential replies to question 27 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶³⁵ Notifying Party's reply to RFI 30.

⁶³⁶ Form CO, paragraph 731.

⁶³⁷ Non-confidential replies to question 30 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶³⁸ Contrary to Slovenia, most of the volumes sold in Croatia are from Croatia (through INA) and imports in Croatia are limited.

⁶³⁹ Form CO, paragraphs 733-738.

⁶⁴⁰ Form CO, Annex 81.

⁶⁴¹ Form CO, paragraph 737.

OMV Slovenija imported all volumes from Slovenia to Croatia.⁶⁴² This is also confirmed by the market investigation as the vast majority of respondents considered that OMV Slovenija is not a relevant player on this market or could not answer the question, which is indicative that in fact OMV Slovenija is not.⁶⁴³

- (562) *Third*, a vast majority of the respondents that expressed an opinion consider that post-Transaction the prices will remain the same as well as the intensity of competition.⁶⁴⁴
- (563) *Fourth*, some customers underlined in the market investigation that they could, to a certain extent, source from abroad showing the existence of a certain degree of competition pressure coming from suppliers active in third countries as it is the case today for OMV Slovenija.⁶⁴⁵
- (564) In light of the above, the Commission considers that the Transaction would not give rise to a significant impediment to effective competition in the markets for the non-retail supply of HOEL in Croatia.

7.3.7. *Non-retail supply of heavy fuel oil (Croatia)*

7.3.7.1. Market definition

7.3.7.1.1. Product market definition

7.3.7.1.1.1. Commission's precedents

- (565) As previously referred, in its *PKN Orlen / Grupa Lotos* decision, the Commission found that HOEL constituted a separate product market from HFO that in turn was sub-segmented according to its different uses:⁶⁴⁶ on the one hand as motor fuel for large marine engines (HFO 0.5%), and on the other hand as an energy source/fuel for inland industrial processes (HFO 1%) (e.g., power plants, horticulture, industrial laundry, etc.).

7.3.7.1.1.2. Notifying Party's view

- (566) The Notifying Party considers that HFO 0.5% constitutes a separate market from other types of heating oil, including HOL/HOEL, and possibly HFO 1% that is used for non-marine purposes. According to the Notifying Party, on the Croatian market there are two quality specifications for fuel oil in non-retail: (i) fuel oil 1% – that is intended for continental consumption (that amounts to approximately 90-95% of total consumption); and (ii) fuel oil 0.5% – a product introduced in 2020 that is intended for maritime transport (and amounts to approximately 5-10% of total consumption). However, given the lack of any anti-competitive effects of the Transaction under any market definition, the Notifying Party submits that the exact definition of the relevant product market can be left open.

7.3.7.1.1.3. Commission's assessment

- (567) The Commission considers that the exact delineation of the relevant market for the non-retail supply of HFO may be left open in this case, as the Transaction does not

⁶⁴² Notifying Party's reply to RFI 32.

⁶⁴³ Non-confidential replies to question 32 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶⁴⁴ Non-confidential replies to questions 34 and 35 of Questionnaire 7 to Wholesale Customers in Croatia. The responses were quite mixed on whether, in case of a price increase, customers would switch to other suppliers, but this might be explained by INA's current position and does not appear merger specific.

⁶⁴⁵ Non-confidential replies to question 31 of Questionnaire 7 to Wholesale Customers in Croatia.

⁶⁴⁶ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 171.

give rise to a significant impediment to effective competition under any plausible product market definition, i.e., considering HFO 0.5% and 1% as two separate product markets. For clarity, OMV Slovenija does not have ex-refinery sales of HFO in Croatia so the present assessment focuses on non-retail.⁶⁴⁷

7.3.7.1.2. Geographic market definition

7.3.7.1.2.1. Commission's precedent

(568) In its *PKN Orlen / Grupa Lotos* decision, the Commission found that the non-retail supply of HFO could potentially be national or even broader and ultimately left the exact delineation of the market open.⁶⁴⁸

7.3.7.1.2.2. Notifying Party's view

(569) As regards the relevant geographic market, the Notifying Party submits that the same considerations in connection with the non-retail supply of diesel and gasoline as well as the non-retail supply of HOEL apply to the non-retail supply of HFO. As a result, the Notifying Party considers that the relevant geographic market is broader than national, encompassing the CEE countries plus Italy as mentioned above. In any case, the Notifying Party considers that the market is at least national.

7.3.7.1.2.3. Commission's assessment

(570) The Commission considers that whether the geographic scope of the non-retail supply of HFO is national (i.e. Croatia) or boarder can be left open for the purposes of this Decision, as the Transaction does not give rise to a significant impediment to effective competition under any plausible geographic market definition that is the non-retail supply of HFO at a national level.

7.3.7.2. Competitive assessment

(571) The Transaction leads to a horizontally affected market in the non-retail supply of HFO in Croatia.

(572) Through INA, MOL operates two domestic production sites for fuel oil in Croatia:

- (a) fuel oil in **INA's refinery in Sisak** is produced from Slovnaft HFO to which cutters are added to meet Croatian fuel oil specifications; and
- (b) fuel oil in **INA's refinery in Rijeka** is produced from INA's own produced vacuum residue to which INA adds cutters to meet the desired fuel oil specifications.

7.3.7.2.1. Notifying Party's view

(573) The Notifying Party considers that the overlap between the Parties activities in Croatia regarding the sale of HFO (in particular the sale of HFO 0.5%) is marginal and will not lead to any plausible anti-competitive effects.⁶⁴⁹

(574) OMV Slovenija's activities in the non-retail supply of HFO in Croatia are limited: OMV Slovenija supplied HFO 0.5% only to [...] Further, OMV Slovenija does not supply HFO 1%.

⁶⁴⁷ Notifying Party's reply to RFI 31.

⁶⁴⁸ Case M.9014 – *PKN Orlen/Grupa Lotos*, paragraph 268.

⁶⁴⁹ Form CO paragraph 748.

- (575) Further, the Notifying Party submits that consumption of HFO 1% is declining as consumers switch to more environmentally friendly products, primarily natural gas and that consumption is expected to disappear by the year 2030.⁶⁵⁰
- (576) In addition to declining demand, [details on MOL's supply sources in Croatia].⁶⁵¹

7.3.7.2.2. Commission's assessment

- (577) In 2021, OMV Slovenija's market share in the market for the non-retail supply of HFO 0.5% in Croatia was [0-5]% (and it was [0-5] for HFO 1%).⁶⁵² MOL's market share in the market for the non-retail supply of HFO 0.5% in Croatia amounted to [90-100]% in 2021.⁶⁵³ Its market share reaches 100% when excluding sourcing from abroad.⁶⁵⁴ While the Parties' combined share would amount to [90-100]%, the Commission considers that such a limited increment ([0-5]%) makes it unlikely that competition concerns will arise on any of these markets as a result of the Transaction.
- (578) In light of the above, Commission considers that the Transaction does not give rise to a significant impediment to effective competition in the market for non-retail supply of HFO in Croatia.

8. VERTICALLY AFFECTED MARKETS

- (579) In this Section, the Commission will assess whether the Transaction would give rise to non-horizontal competition concerns either with respect to input foreclosure or customer foreclosure in the markets that are vertically affected by the Transaction.
- (580) According to the Non-Horizontal Merger Guidelines, input foreclosure occurs when actual or potential rivals' access to supplies or markets is hampered, thereby reducing those companies' ability and/or incentive to compete. Such foreclosure may discourage entry to or expansion of rivals on the market, or encourage their exit.⁶⁵⁵
- (581) In addition, the Non-Horizontal Guidelines identify customer foreclosure as occurring where the transaction is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.⁶⁵⁶
- (582) In order for foreclosure to be a concern, three conditions need to be met post-Transaction: (i) the new entity needs to have the ability to foreclose its rivals; (ii) the new entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a negative impact on effective competition leading to an increase in downstream prices charged to consumers. In practice, these factors are often examined together since they are closely intertwined. For the purpose of the vertical assessment, the main vertical links between the Parties will be assessed.⁶⁵⁷⁶⁵⁸

⁶⁵⁰ Form CO paragraph 746.

⁶⁵¹ Form CO, paragraph 747.

⁶⁵² Form CO, paragraph 748 and Annex 81.

⁶⁵³ *Ibid.*

⁶⁵⁴ Notifying Party's reply to RFI 32.

⁶⁵⁵ Non-Horizontal Merger Guidelines, paragraphs 29-30.

⁶⁵⁶ Non-Horizontal Merger Guidelines, paragraph 30.

⁶⁵⁷ There are vertical links between the Parties that do not lead to affected markets, specifically: (i) Non-retail sale of LPG (cylinder and autogas) in Slovenia (upstream) and retail sale of automotive LPG and LPG cylinder in Slovenia (downstream); (ii) Non-retail sale of heating oil in Slovenia (upstream) and retail sale of heating oil in Slovenia (downstream); (iii) Non-retail sale of automotive lubricants in

(583) The Commission will consider first the vertical links between the ex-refinery supply of diesel and gasoline separately (upstream), and the non-retail supply of diesel and gasoline separately in Slovenia (downstream). Second, the Commission will assess the vertical link between the markets for the wholesale (ex-refinery and non-retail) supply of diesel and gasoline, separately in Slovenia (upstream) and the market for the retail supply of motor fuels in Slovenia (downstream).⁶⁵⁹ In that respect, the Commission understands that the Parties' competitors have different strategies, some source predominantly from the ex-refinery market (especially the largest competitors, such as Petrol) and some source mostly from the non-retail market (especially the smallest competitors). In addition, in the market investigation, a number of non-retail customers explained that the price difference between the two channels is at most limited.⁶⁶⁰

8.1. Ex-refinery supply of diesel and gasoline in Slovenia (upstream markets) and non-retail supply of motor fuels (diesel and gasoline) in Slovenia (downstream markets)

8.1.1. Market shares and market structure

(584) As shown in Tables 12 and 13, the Parties' market shares on the upstream market for the ex-refinery supply of diesel and gasoline in Slovenia are very moderate and there is no overlap as OMV Slovenija's ex-refinery sales are carved out from the Transaction.

Table 12: Market shares of the Parties and their main competitors for the ex-refinery sales of gasoline in Slovenia (2018-2021)

	2021	2020	2019	2018
MOL (non-intragroup supplies)	[0-5]%	[0-5]%	[0-5]%	[5-10]%
MOL (intragroup supplies)	[5-10]%	[5-10]%	[5-10]%	[5-10]%
OMV Slovenija⁶⁶¹	[0-5]	[0-5]	[0-5]	[0-5]

Source: Form CO, paragraph 665.

Slovenia (upstream) and retail sale of automotive lubricants in Slovenia (downstream); and (iv) Non-retail sale of AdBlue (upstream) and retail sale of AdBlue (downstream).

⁶⁵⁸ The Commission notes that the vertical link between the non-retail sale of bitumen to resellers in Slovenia (upstream) and the supply of bitumen to end-users in Slovenia (downstream) is technically affected in view of the Parties' upstream market share (in 2021, MOL's market share was [40-50]% and OMV Slovenija's market share was [0-5]%, as discussed in (504)). However, the Commission takes the view that the Transaction will not give rise to non-horizontal competition concerns in these markets in view of: the absence of any local production; the very limited increment brought by the Transaction upstream and the negligible activity of the Target downstream (one client only).

⁶⁵⁹ There are vertical links between the Parties' activities in Croatia, leading to a number of technically vertically affected markets, namely (i) the markets for the non-retail supply of diesel and gasoline (upstream, where both Parties are active) and the market for the retail supply of diesel and gasoline (downstream, where only MOL is active), (ii) the market for the non-retail supply of heating oil (upstream, where both Parties are active) and the market for the retail supply of heating oil (downstream, where only MOL is active), and (iii) the markets for the ex-refinery supply of diesel, gasoline and HFO (upstream, where only MOL is active) and the markets for the non-retail supply of diesel, gasoline, and HFO (downstream, where both Parties are active). Since the increment brought by OMV Slovenija on the upstream market is very limited, OMV Slovenija's activities are incidental in Croatia, the Commission considers that the transaction cannot lead to input or customer foreclosure and will therefore not assess further these vertical relationships.

⁶⁶⁰ Non-confidential replies to question 7 of Questionnaire 5 to Wholesale markets – Customers in Slovenia.

⁶⁶¹ Ex-refinery sales are carved out from the perimeter of the Transaction.

Table 13: Market shares of the Parties and their main competitors for the non-retail sales of diesel in Slovenia (2018-2021)

	2021	2020	2019	2018
MOL (non-intragroup supplies)	[0-5]%	[0-5]%%	[0-5]%%	[0-5]%%
MOL (intragroup supplies)	[5-10]%	[5-10]%	[5-10]%	[5-10]%
OMV Slovenija	[0-5]	[0-5]	[0-5]	[0-5]

Source: Form CO, paragraph 665.

- (585) When looking at a broader geographic market, the Parties confirmed that MOL's ex-refinery market shares are below 20% on all plausible geographic market definitions.
- (586) The market shares of the Parties on the non-retail sales are more significant as explained in recitals (481) and (482). On the non-retail sales of gasoline in 2021, MOL's share amounted to [10-20]%; OMV Slovenija had a market share of [30-40]%; and Petrol had a market share of [40-50]%. As regards the non-retail sales of diesel in 2021, MOL's share amounted to [10-20]%; OMV Slovenija had a market share of [20-30]%; and Petrol and Leitner's market shares amounted to 57% and 5%, respectively.

8.1.2. Notifying Party's view

- (587) The Notifying Party submits that there are no vertical issues resulting from the Transaction. First, it submits that MOL will continue to sell refined oil products to all available customers as wholesale sales form part of its business model post-Transaction. According to the Notifying Party, post-Transaction, MOL will aim at maximising the volumes sold in Slovenia, including to ex-refinery customers. In addition, in Slovenia the ex-refinery suppliers will continue to have access to a large number of customers including Petrol, Shell, Leitner and other retailers.⁶⁶²

8.1.3. Commission's assessment

- (588) As regards the vertically-affected markets between the ex-refinery supply of diesel and gasoline (upstream) and the non-retail supply of motor fuels (downstream), the Commission first notes that MOL's market share on the ex-refinery segment is limited⁶⁶³ and there is no overlap as OMV's ex-refinery sales are carved out from the Transaction. In the downstream market for the non-retail sales of motor fuels, the Parties' market shares will be more significant.
- (589) In view of the market shares downstream, the Commission assessed whether the Transaction could give rise to customer foreclosure for the ex-refinery suppliers.
- (590) The Commission considers that the new entity will not have the ability to, at the upstream level, foreclose its ex-refinery competitors' access to customers. This is because currently the Parties are vertically integrated companies⁶⁶⁴ sourcing already to a large extent from their own groups. More precisely, OMV Group supplies more than [...] of OMV Slovenija's needs for both diesel and gasoline⁶⁶⁵. MOL is supplied by its group for [...] of its gasoline needs and for [...] of its diesel needs, the rest being predominantly supplied by [details on MOL's supply sources in Slovenia].⁶⁶⁶

⁶⁶² Form CO, paragraph 761.

⁶⁶³ Well below 20% at EEA level, in the CEE+Italy region as well as at national level.

⁶⁶⁴ The Target relies on OMV Group's assets.

⁶⁶⁵ Form CO, Annex 69.

⁶⁶⁶ Form CO, Annex 71.

- (591) As a result, even if MOL were to supply 100% of MOL and OMV Slovenija's needs, no supplier on the ex-refinery would lose significant volumes as currently they source almost only from MOL and OMV Group.
- (592) In addition, the Commission notes that the ex-refinery suppliers are supplying diesel and gasoline to Slovenia but also outside of Slovenia and no company active as a supplier in the ex-refinery segment expressed any concerns in relation to this Transaction.
- (593) In the absence of ability to foreclose, the Commission concludes that the Transaction would not result in a significant impediment to effective competition in relation to the upstream ex-refinery supply of diesel and gasoline markets and the downstream retail supply of motor fuels in Slovenia as a result of vertical non-coordinated effects.

8.2. Wholesale (ex-refinery and non-retail) supply of diesel and gasoline in Slovenia (upstream market) and retail supply of motor fuels in Slovenia (downstream market)

- (594) The Transaction would give rise to vertically-affected markets in Slovenia with regard to the wholesale (ex-refinery and non-retail) supply of diesel and gasoline (upstream) and the retail sales of motor fuels (downstream).

8.2.1. Market structure

- (595) Based on the data provided by the Parties in the Form CO, the Commission notes that the market shares would be the following:
- (a) For the ex-refinery supply, MOL's market share is below 10% in Slovenia and OMV Slovenija is not active as the related contracts are carved out from the Transaction;
 - (b) For the non-retail supply, MOL and OMV Slovenija's market shares are respectively, [10-20]% and [20-30]% for diesel and [10-20]% and [30-40]% for gasoline in Slovenia.⁶⁶⁷
 - (c) For the overall retail supply of diesel and gasoline,⁶⁶⁸ the combined 2021 market shares are of 31% in number of stations (10% for MOL and 22% for OMV Slovenija) and [30-40]% in volume ([20-30]% for OMV Slovenija and [10-20]% for MOL).

8.2.2. Notifying Party's view

- (596) The Notifying Party submits that there are no vertical issues resulting from the Transaction. First, it submits that, post-Transaction, MOL will continue to sell refined oil products to all available customers as wholesale sales form part of its business model. According to the Notifying Party, post-Transaction, MOL will aim at maximising the volumes sold in Slovenia, including to non-retail customers (part of them being the retail competitors). In addition, retail competitors will continue to have alternatives to source from, such as from Petrol, which will remain the main importer of diesel and gasoline in Slovenia, from Leitner or directly from third parties. Lastly, OMV Group will remain active in the upstream market and will continue to hold infrastructure that allows it to supply non-retail customers in Slovenia.⁶⁶⁹

⁶⁶⁷ Notifying Party's reply to RFI 30.

⁶⁶⁸ B2C+B2B+all stations (regular and trucks-only stations).

⁶⁶⁹ Form CO, paragraph 757-758.

8.2.3. Commission's assessment

(597) The Commission takes the view that the Transaction will not result in a significant impediment to effective competition as a result of vertical non-coordinated concerns with respect to input foreclosure with regard to the vertical relationship between the upstream wholesale supply of diesel and gasoline markets and the downstream retail supply of motor fuels, in the following recitals.

8.2.3.1. Input foreclosure

(598) The Commission considers that the new entity is unlikely to have the ability to foreclose its retail competitors in the retail market for motor fuels by limiting access to the key input (*i.e.*, diesel and gasoline) purchased at wholesale level.

(599) First, the Transaction will not change the ability of the downstream competitors to source on the ex-refinery market. As mentioned above, the Parties have a limited market share on this market and there is no overlap. As a result, the downstream competitors sourcing on the ex-refinery segment will continue to be able to source from multiple sources, importing diesel or gasoline in Slovenia.

(600) Second, in relation to the non-retail market, the Commission notes that this market is very small in Slovenia as regards diesel and almost inexistent as regards gasoline.⁶⁷⁰ Only the small competitors are sourcing predominantly on the non-retail market and all together they have a very small market share on the downstream market (less than 6%).

(601) Overall, the dynamics of the non-retail market will not be significantly altered as the Parties will continue to face strong competition from Petrol and Leitner. Petrol will remain the main importer of fuel into Slovenia and the Commission notes that the Parties' retail competitors source largely from Petrol. The Parties will also face competition from the Austrian company, Leitner, which has recently significantly expanded its activities in the Slovenian market for the supply of diesel and could easily expand its offering to gasoline.⁶⁷¹ Leitner explained during the market investigation that it could start supplying gasoline into Slovenia from its assets located in Austria.⁶⁷² The Commission notes that one retail competitor is already sourcing part of its needs from Leitner for its Slovenian activities⁶⁷³ and that MOL also sourced some volumes in the last years.⁶⁷⁴

(602) Third, the results of the market investigation suggest that the Parties' customers will not be dependent on the new entity post-Transaction. Indeed, it appears that the vast majority of the downstream competitors that responded to the market investigation consider that should MOL and OMV Slovenija stop supplying them or increase prices, they would find an alternative supplier.⁶⁷⁵ The vast majority of the competitors that responded to the market investigation did not source from MOL in the last 2 years.⁶⁷⁶ This means that the Transaction will in practice not reduce the number of suppliers that the Parties' competitors currently use.⁶⁷⁷ In any case, as

⁶⁷⁰ 9600 tons a year. Form CO, paragraph 669.

⁶⁷¹ Non-confidential minutes of call with a competitor dated 28 January 2022.

⁶⁷² Non-confidential minutes of call with a competitor dated 28 January 2022.

⁶⁷³ Non-confidential minutes of call with a competitor dated 28 January 2022. See also non-confidential replies to question 56 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁷⁴ Form CO, Annex 70.

⁶⁷⁵ Non-confidential replies to question 57 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁷⁶ Non-confidential replies to question 54 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁷⁷ Non-confidential replies to question 54 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

explained above, OMV Group will continue to be able to supply diesel and gasoline to downstream competitors.

- (603) Fourth, the majority of the retail competitors considered that the new entity will neither have the ability nor the incentive to cease the supply of motor fuels to them and a number of them considered that it will not have the incentive or ability to increase wholesale prices.⁶⁷⁸ One competitor even explained that the new entity could even “*increase supplying motor fuel to our company by offering better conditions and prices than Petrol*”.⁶⁷⁹
- (604) Fifth, during the market investigation, none of the competing rivals on the retail fuel market expressed substantiated concerns over having to exit the Slovenian retail fuel market for not being able to source fuel post-Transaction.⁶⁸⁰
- (605) Sixth, these findings are consistent with the fact that many non-retail customers that responded to the market investigation did not point to MOL as a strong competitor on the wholesale market⁶⁸¹.
- (606) In view of the above, the Commission considers it unlikely that the new entity will have the ability to engage in input foreclosure (either total or partial) with respect to the upstream wholesale supply of diesel and gasoline and to the downstream retail supply of fuels. Indeed, the Parties’ downstream rivals will always keep the possibility to turn to alternative sources of supply.
- (607) In addition, the Commission notes that any input foreclosure strategy is unlikely to have an impact on the market. As explained, the only players could potentially be affected by such a strategy are the smaller networks and the white pumpers that do not exert a significant competitive constraint on the retail market as explained in Section 7.2.1.3.2.1, D. Indeed, they represent very limited volumes (less than 6% all together) and are already sourcing – to a large extent - from the vertically integrated players that are the main competitors at a retail level. In this specific context, they usually tend to passively follow the retail prices set out by the market leaders (see, for example, recital (345).
- (608) In the absence of the ability to foreclose and in view of the lack of impact on the market, the Commission concludes that the Transaction would not result in a significant impediment to effective competition in relation to the upstream wholesale supply of diesel and gasoline and the downstream retail supply of motor fuels in Slovenia as a result of vertical non-coordinated effects.

8.2.3.2. Customer foreclosure

- (609) The Notifying Party is of the view that the Transaction does not entail any risk of customer foreclosure in connection with the vertical links between the non-retail and retail supply of motor fuel. In particular, the Notifying Party submits in this regard that the Target sources its supplies on the ex-refinery market and therefore when assessing the effects of the Transaction on the non-retail / retail markets, the Transaction does not bring about an integration of a supplier with an important customer in the downstream market.⁶⁸²

⁶⁷⁸ Non-confidential replies to question 63 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁷⁹ Non-confidential replies to question 63 of Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁸⁰ Non-confidential replies to Questionnaire 1 Retail Markets – Competitors in Slovenia.

⁶⁸¹ Non-confidential replies to question 21.2 of Questionnaire 5 to Wholesale markets – Customers in Slovenia.

⁶⁸² Notifying Party’s reply to RFI 30.

- (610) The Commission understands that:
- (1) [Details on the Target's supply sources in Slovenia]; as a result, the non-retail suppliers will not be deprived of significant volumes that they would currently deliver to OMV Slovenija;
 - (2) outside of the Parties, there are only two suppliers currently active in the non-retail market: (i) Petrol, which will remain the main importer of fuel in Slovenia and will continue to supply predominantly its own network; and (ii) Leitner, an Austrian company that recently increased significantly in the Slovenian non-retail market whose supplies to the Parties are limited (none to OMV Slovenija and limited volumes to MOL representing less than [0-10]% of MOL's purchases in 2020).⁶⁸³
- (611) In view of these elements, the Commission considers that the Transaction would not lead to a significant impediment of effective competition in relation to a potential customer foreclosure of non-retail suppliers in Slovenia.

9. EFFICIENCIES

- (612) The Notifying Party submits that the Transaction will bring efficiencies to the market. Such efficiencies are based on two main claims: (1) supply side synergies resulting from achieving the necessary scale for viable retail sales of Rijeka output volumes in Slovenia (rather than in the Mediterranean); and (2) cost efficiencies in the form of savings in storage costs, logistics costs and other operating expenses (OPEX)-related savings.
- (613) As part of its in-depth investigation, the Commission further investigated the efficiency claims brought by the Parties.
- ### **9.1. Notifying Party's view**
- (614) The Notifying Party submitted an analysis of supply synergies and cost efficiencies⁶⁸⁴ describing firstly how MOL will be incentivised post-Transaction to compete for extra sales volumes on the Slovenian fuel retail market, and secondly MOL's ability to pass-on part of the savings caused by the Transaction to end customers by offering discounted prices post-Transaction.
- (615) According to the Notifying Party's original submission on efficiencies from 13 April 2022 received as a response to RFI 01, Q45.1 ('original efficiency submission'), an ongoing investment to upgrade the Rijeka refinery in Croatia will significantly increase its diesel and gasoline output from 2023 onwards. [...]. However, the Transaction, by increasing significantly the volumes that MOL Group will sell in Slovenia at retail level, will make it profitable for MOL to supply the combined network of OMV Slovenija and MOL in Slovenia from Rijeka post-Transaction, [...].
- (616) In this original efficiency submission, the Notifying Party provided the Commission with an in-house analysis which aims at quantifying the discounts MOL should offer in order to meet its sales targets post-Transaction. According to this analysis, MOL would need to offer a discount of [...] per litre on prices offered at stations that are located less than [...] minutes away from a Petrol fuel station.

⁶⁸³ Form CO, Annex 71.

⁶⁸⁴ Notifying Party's reply to RFI 1, question 45.1, supplemented and amended by a "pro-competitive presentation" received on August 3, 2022 and by Notifying Party's reply to RFI 19.

- (617) According to the Notifying Party, the margin gain of [...] per litre on the Rijeka refinery sales provides MOL with the financial means to support gaining market shares from Petrol through discounted prices. Additional cost efficiencies including savings in storage costs, logistics costs, and other OPEX savings would amount to more than [...] per litre, granting room for MOL to offer further price discounts.
- (618) In the Notifying Party's pro-competitive presentation received on 3 August 2022 ('efficiency presentation'), the Notifying Party provided further explanations. According to these refined calculations, supplying the combined network of OMV Slovenija and MOL in Slovenia from Rijeka post-Transaction, instead of exporting these volumes to the Mediterranean markets would generate an additional margin of [...] per ton, which would be equivalent to [...] per litre.
- (619) In the Notifying Party's Reply to RFI 19 received on 26 September 2022 ('amended efficiency submission'), the Notifying Party provided an updated version of the slides from the efficiency presentation, together with an updated version of the calculations file provided in the original efficiency submission. According to this third set of hypotheses, although the additional unit margin of exporting volumes to Slovenia instead of the Mediterranean markets would increase to [...] per ton, only [50-60]% of the supply volumes of the new entity post-Transaction in Slovenia would be sourced from Rijeka. [Explanations related to the refinement of the analysis provided in the 'amended efficiency submission'].

9.2. Commission's assessment

- (620) According to the Horizontal Merger Guidelines,⁶⁸⁵ in order for efficiencies to be taken into account, the following, cumulative criteria need to be met. First, the claimed efficiencies must be verifiable (such as that the Commission can be reasonably certain that they will materialise and be substantial enough). Second, the efficiencies must be merger-specific (that is, they cannot be achieved by other means than by the merger). Third, the efficiencies must be likely passed-on to consumers, and not only recouped by the merging companies alone.
- (621) On the basis of the documents submitted, the Commission sought to assess: (1) whether the efficiency claims are verifiable; (2) whether the efficiencies described were specific to the Transaction; and (3) whether these efficiency gains would be passed-on to the end customer.
- (622) As to the verifiability of the efficiency claims, the Notifying Party submitted a quantitative analysis of the efficiencies relating to the supply of Slovenia from Rijeka, together with the underlying calculation files. The Commission reviewed the methodology and parameters used to substantiate and numerically evaluate the efficiency gains and discounts. The Commission found that, in the last version of the documents submitted as annexes to Reply to RFI 19 submitted on 26 September 2022, following several rounds of discussions and comments with the Parties, the parameters used were substantiated and the methodology was detailed. However, the Notifying Party failed to substantiate its counterfactual claims to a sufficient degree as further detailed in the merger-specificity assessment in recital (624) onwards.
- (623) As regards the verifiability of the other OPEX saving of [...], the Notifying Party submitted detailed explanations and underlying detailed calculations to support the

⁶⁸⁵ Horizontal Merger Guidelines, paragraphs 76-88.

alleged savings⁶⁸⁶. However, the Commission found that, although the parameters used were substantiated and the methodology was detailed, a share of the alleged OPEX savings, namely the savings relating to storage and logistics costs were actually redundant with the efficiencies claimed for the supply of Slovenia from Rijeka. This double counting accounted for [...] and was acknowledged by the Notifying Party.⁶⁸⁷ Moreover, some of the OPEX savings relating to the integration of MOL and OMV Slovenija IT systems of [...] per litre are acknowledged by the Notifying Party to be uncertain, depending on whether MOL and OMV Slovenija will remain separate legal entities post-merger⁶⁸⁸. Hence, of these alleged other OPEX savings of [...] per litre, only [...] per litre remains justified, realised through a reduction of the personnel.

- (624) As to the merger-specificity of the efficiency claims, the Commission considers that they are not supported by the evidence available. The Rijeka margin gain of [...] described in the amended efficiency submission was computed by the Notifying Party as against a counterfactual scenario in which, absent the Transaction, the Rijeka refinery would not supply any additional volumes in Slovenia after its refurbishment, not even in MOL's Slovenian stations. However, absent the Transaction, MOL could still be incentivised to supply Slovenia, either by supplying its own network of stations, or even with agreements to supply its competitors.
- (625) First, the claimed supply synergies are not merger specific for the current MOL network. In its response to RFI 19 Q7, MOL specifies that “[*details on MOL's supply sources and strategic decisions regarding the Transaction*]”. The Commission notes that, based on the Notifying Party's own model, given the large benefits that MOL would obtain by supplying from the upgraded Rijeka refinery, it seems implausible that MOL would not supply its own Slovenian network from Rijeka absent the Transaction. Further, the Notifying Party did not provide any substantiation (business documents, strategic plans, calculations before the notification of the Transaction) on changing, reducing, or ceasing to operate MOL's Slovenian network. Hence, overall it is likely that MOL would benefit from the claimed supply synergies even in the absence of the Transaction.
- (626) Second, it is unlikely that MOL would not consider a supply agreement with OMV Slovenija absent the Transaction. According to the Notifying Party, [*details on MOL's supply sources and strategic decisions regarding the Transaction*].
- (627) However, OMV Slovenija explained [...].
- (628) Based on the above, MOL would earn substantial additional profit from supplying OMV Slovenija absent the Transaction. [*Details on MOL's profit calculations and strategic decisions regarding the Transaction*]. Hence, it is unlikely that MOL would not consider entering into a supply agreement with OMV Slovenija absent the Transaction.
- (629) Third, Petrol's supply sources are unlikely to be affected by the Transaction. The Commission understands that it would be unlikely that Petrol would be supplied from Rijeka. This is because Petrol owns and uses storage facilities in Port of Koper and Instalacija. Hence, it would not save any logistic costs by being supplied from

⁶⁸⁶ Notifying Party's reply RFI 1, Annex 45.1, and Notifying Party's reply to RFI 19, question 17.

⁶⁸⁷ Notifying Party's reply RFI 19, question 18.

⁶⁸⁸ Notifying Party's reply RFI 19, question 17.

Rijeka. As such, it would be unprofitable for Petrol to source from other than the Mediterranean, both under the Transaction and counterfactual scenarios.

- (630) As regards the merger-specificity of the OPEX savings realised through personnel reduction of [...] per litre, the Notifying Party did justify which managerial positions would be saved after the Transaction and what was the associated yearly cost⁶⁸⁹.
- (631) Finally, as regards the pass-on of the claimed efficiency gains of both the supply of Slovenia from Rijeka and the OPEX savings realised through personnel reduction to the end consumers, the Commission considers that the Notifying Party failed to show the likely passing-on. The Notifying Party only provides a level of price discount that it should apply to meet its volume targets, without linking the necessity to reach these targets to the efficiency gains, or the incentive to pass-on the gains to consumers. In other words, the Notifying Party does not demonstrate any causal link between the efficiency gains obtained in Rijeka and the discounts MOL deems necessary to implement.
- (632) In the absence of any elements provided by the Notifying Party on the pass-on, and solely for illustrative purposes, implied passed-on discounts can be calculated. Such implied pass-on discounts are based on the assumptions that some of the claimed efficiency gains would be passed-on to the final consumer (given that the additional margin generated by supplying Slovenia through Rijeka is equivalent to a decrease in variable costs), and that a pass-on rate of either 50% or 100% prevails. In the case OMV Slovenija would be supplied by MOL absent the Transaction, the Notifying Party's view that a smaller share of the efficiency would be passed-on appears correct.⁶⁹⁰ Assuming a split of the efficiency gains between MOL and OMV Slovenija, the pass-on rate would then only apply to the cost reduction that OMV Slovenija gets on these volumes (while not to the share of efficiency gains that MOL keeps). It can be further noted, however, that the pass-on rate could differ between MOL and OMV Slovenija volumes, in particular because if MOL was to apply a discount on its volumes sold, OMV Slovenija could be incentivised to match it, implying a higher pass-on rate for OMV Slovenija than for MOL. Assuming similar pass-on rates across the two networks is, therefore, conservative.
- (633) Assuming a pass-on rate of 100%, the resulting Transaction-specific price discount for consumers would be [...], or [...] of the fuel retail price, when considering that MOL could supply both its own network and OMV Slovenija's network absent the Transaction. With a pass-on rate of 50%, the resulting Transaction-specific price discount would drop to [...], or [...] of the fuel retail price. Such magnitude of price discounts is highly unlikely to be able to compensate the anti-competitive effects of the Transaction. Moreover, as noted above, the Notifying Party failed to substantiate that the claimed synergies would be passed-on to the consumers.

9.3. Conclusion on efficiencies

- (634) The Commission considers that the Notifying Party failed to meet the required test to show the existence of efficiencies stemming from the Transaction. In particular, most of the claimed synergies are likely not merger specific, not sufficiently verifiable, and not sufficiently shown to be passed on to the consumers. In any event, the synergies are likely not large enough to substantially affect the conclusions that the Transaction would result in a significant impediment to effective competition in the

⁶⁸⁹ Notifying Party's reply to RFI 19, question 17.

⁶⁹⁰ Notifying Party's reply to RFI 19, question 8a.

market for retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia.

10. GENERAL CONCLUSION

- (635) In light of the above, the Commission considers that the Transaction would result in a significant impediment to effective competition in the market for retail supply of motor fuels to B2C customers from non-DARS stations in Slovenia at a national and a local level as a result of horizontal non-coordinated, and as a result of horizontal coordinated effects.

11. COMMITMENTS

11.1. Analytical framework

- (636) The following principles set out in the Merger Regulation and in the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004⁶⁹¹ and under Commission Regulation (EC) No 802/2004 ('Remedies Notice') apply where parties to a concentration offer commitments with a view to rendering a concentration compatible with the internal market.
- (637) Where a concentration raises competition concerns in that it could significantly impede effective competition, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their concentration.⁶⁹²
- (638) As set out in the Remedies Notice in order to be accepted by the Commission the commitments have to entirely eliminate the competition concerns raised by the concentration,⁶⁹³ and have to be comprehensive and effective from all points of view.⁶⁹⁴ The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.⁶⁹⁵
- (639) In assessing whether commitments will be appropriate to preserve effective competition post-Transaction, the Commission is to consider all the relevant factors including, inter alia, the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Parties and other participants on the market.⁶⁹⁶
- (640) For the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.⁶⁹⁷
- (641) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments,

⁶⁹¹ OJ C 267, 22.10.2008, p. 1.

⁶⁹² Remedies Notice, paragraph 5.

⁶⁹³ See also Case C-202/06 P - *Cementbouw Handel & Industrie v Commission*, paragraph 54.

⁶⁹⁴ Remedies Notice, paragraphs 9 and 61.

⁶⁹⁵ Remedies Notice, paragraph 9.

⁶⁹⁶ Remedies Notice, paragraph 12.

⁶⁹⁷ Remedies Notice, paragraph 9.

such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.⁶⁹⁸

- (642) The Commission may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be carved out in those respects.⁶⁹⁹ However, in any case, the Commission will only be able to accept commitments which require the carve-out of a business if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risk for the viability and competitiveness caused by the carve-out is reduced to a minimum.⁷⁰⁰
- (643) The intended effect of a divestiture will only be achieved if and when the business to divest is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. To ensure that the business is divested to a suitable purchaser, the commitments must include criteria to define its suitability which will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.⁷⁰¹
- (644) However, there are situations where the Commission does not need to provide for the criteria for the parties to identify a suitable purchaser since the parties have already entered into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission's procedure (so called fix-it-first remedy). In this situation, the Commission will be able to decide whether the transfer of the divested business to the identified purchaser will remove the competition concerns. In this case, and if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.⁷⁰²
- (645) If the parties choose to enter into a binding agreement with a suitable purchaser during the procedure by way of a fix-it-first remedy, the Commission will be able, in those circumstances, to conclude with the requisite degree of certainty that the commitments will be implemented with a sale to a suitable purchaser.⁷⁰³

11.2. Description of the proposed commitments

- (646) To render the Transaction compatible with the internal market, the Notifying Party modified it by entering into the following commitments (the 'Commitments' or 'Proposed Commitments').

⁶⁹⁸ Remedies Notice, paragraph 19.

⁶⁹⁹ Remedies Notice, paragraph 35.

⁷⁰⁰ Remedies Notice, paragraph 36.

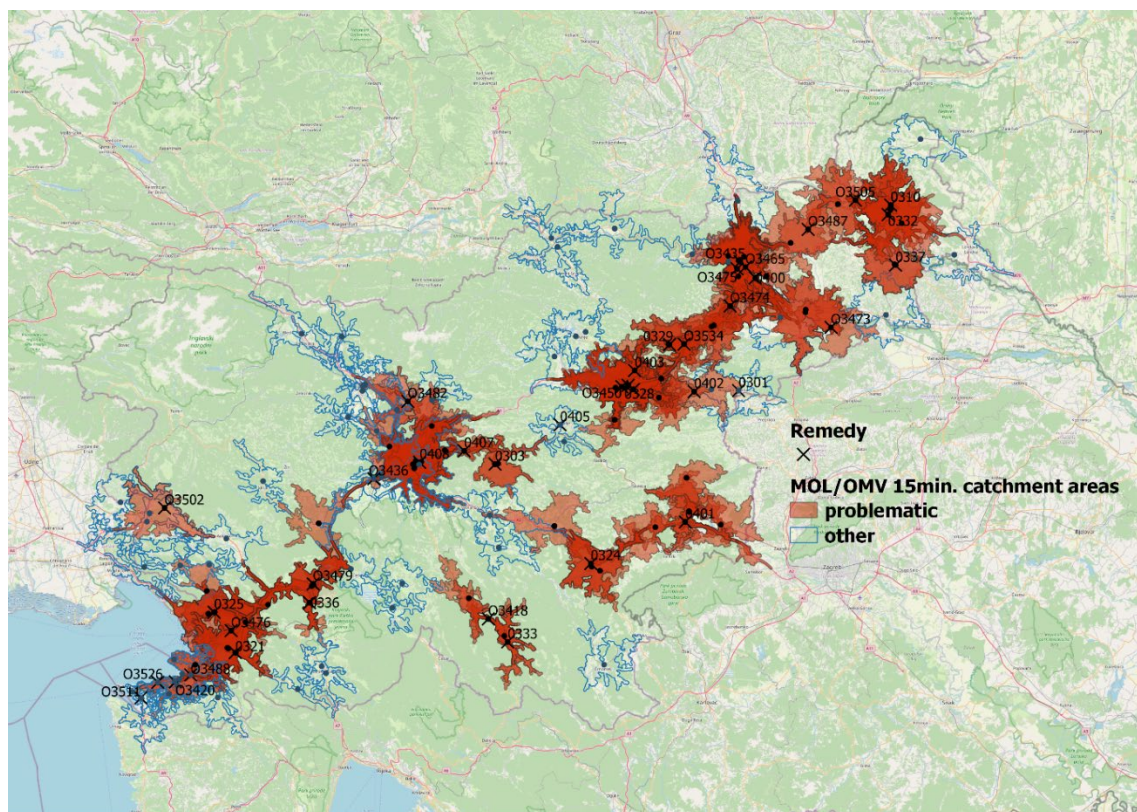
⁷⁰¹ Remedies Notice, paragraph 43.

⁷⁰² Remedies Notice, paragraph 56.

⁷⁰³ Remedies Notice, paragraph 57.

- (647) Pursuant to the Commitments, the Notifying Party undertakes to divest a nation-wide retail network of 39 fuel stations in Slovenia, currently operating as part of the fuel station networks of MOL and OMV Slovenija, to Shell Adria d. o. o. ('Shell' or 'the Purchaser'). In particular, the Notifying Party commits to divest:
- (a) 20 fuel stations operated under the company-owned-commission-agent (COCA) model⁷⁰⁴ under the MOL brand ('MOL Divestment Business'); and
 - (b) 19 fuel stations operated under the OMV brand, i.e., 18 fuel stations operated under the company-owned-dealer-operated (CODO) model⁷⁰⁵ and 1 fuel station operated under the dealer-owned-dealer-operated DODO model⁷⁰⁶ ('OMV Divestment Business').
- (648) The MOL Divestment Business and the OMV Divestment Business are collectively referred to as the 'Divestment Business'.

Figure 22: Catchment areas around MOL and OMV Slovenija fuel stations



Source: Commission analysis based on population data of Slovenia and station-level data provided by the Parties accompanying "Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija" submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

⁷⁰⁴ Company-owned-commission-agent model pursuant to which the oil company owns both the fuel and the non-fuel stock (shop merchandise - operation and pricing). The commission agent/partner employs the staff and receives from the oil company a commission after sales to run operational expenses etc.

⁷⁰⁵ Company-owned-dealer-operated model pursuant to which the oil company owns the fuel, but the non-fuel stock (shop merchandise - including lubricants and convenience goods -, operation and pricing) belongs to the dealer. Thus, the dealer acts in the name and on behalf of the oil company only with regard to the sale of fuel and receives a commission for any fuel sales. For non-fuel stock, the dealer acts as a reseller and pays a rental fee to the oil company, as portion of its non-fuel net turnover.

⁷⁰⁶ Dealer-owned-dealer-operated model pursuant to which there is a supply agreement in place whereby the dealer uses the visual items, i.e., the branding and advertisement of the oil company and pays royalties in return. The dealer owns both the fuel and non-fuel stock.

- (649) The Divestment Business includes:
- (a) all tangible assets necessary for the operation of the Divestment Business;
 - (b) any licences, permits and authorisations that are transferred together with real estate by virtue of Slovene law; and
 - (c) all contracts, leases, commitments, and customer orders of the Divestment Business, as well as all customer, credit, and other records of the Divestment Business if reasonably necessary for the divestment of the Divestment Business and if available and lawfully transferrable to the Purchaser. For the avoidance of doubt, B2B related data will not be transferred to the Purchaser.
- (650) In addition, the Divestment Business gives the Purchaser the option to purchase all hydrocarbon inventory⁷⁰⁷ and non-fuel inventory⁷⁰⁸ available at the respective fuel stations of the Divestment Business on the date of the transfer of the legal title of the Divestment Business to the Purchaser ('Closing Date').
- (651) Further, the Divestment Business gives the Purchaser the option to conclude with MOL Slovenija or another designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the fuel stations of the Divestment Business under standard conditions applied to comparable wholesale customers. This agreement is provided for an initial period of 1 year and it is extendable upon the request of the Purchaser by 1-year periods up to a maximum duration of 3 years from the Closing Date. In respect of other services that are currently provided to the Divestment Business based on supply or service agreements concluded with third-party providers/suppliers, MOL commits to provide to the Purchaser, upon request, the respective contact details of such third-party providers/suppliers. Should it deem necessary, this supply agreement and the other temporary agreements would help the Purchaser of the Divestment Business to set up its own sourcing strategy to be able in the short term to be a standalone business.
- (652) In addition, pursuant to the Commitments the Notifying Party commits to hold separate the Divestment Business from the retained business and to preserve its viability, marketability, and competitiveness, including the appointment of a monitoring trustee and a hold separate manager.
- (653) On 9 March 2023, the Notifying Party has entered into a legally binding agreement with the Purchaser setting out the terms of the purchase of the Divestment Business ('Share Purchase Agreement' or 'SPA'). The divestment therefore represents a fix-it-first remedy⁷⁰⁹ which enables the Commission to assess with a requisite degree of certainty whether the transfer of the Divestment Business to the identified purchaser removes the competition concerns raised by the Transaction.

⁷⁰⁷ Means all hydrocarbon inventory of any nature which will be stored in storage tanks at the relevant fuel station, including all liquid petroleum gases, gasolines, diesel exhaust fluid and other petroleum products of any nature stored in storage tanks.

⁷⁰⁸ Means all non-fuel inventory which will be stored at the given fuel station.

⁷⁰⁹ Remedies Notice, paragraphs 56 and 57.

11.3. Commission's assessment of the Commitments

11.3.1. Suitability to remove serious doubts

- (654) **Non-coordinated effects.** As initially notified, the Transaction could lead to a significant impediment to effective competition in the market for retail fuel supply from non-DARS stations to B2C customers as a result of unilateral non-coordinated effects both at national level, and in particular in 85 problematic catchment areas where the following two cumulative conditions were met (i) the Parties' joint share was more than 40% and (ii) the Parties' joint share increased by more than 5 percentage points post-Transaction.
- (655) The Commitments will create a significant third player on the national market in Slovenia that will act as a strong competitive force capable of exerting competitive pressure on the new entity. Specifically, the Purchaser will replace MOL's role as a third competitive force in the market for retail fuel supply from non-DARS stations to B2C customers: (i) the Purchaser will have a network of 39 B2C stations, which constitutes 76.5% of MOL's pre-Transaction share in number of stations; with a volume market share of [10-20]%, representing [60-70]% of MOL's pre-Transaction; (ii) the Purchaser's network will cover 59% of Slovenia's population (which is 87% of MOL's population coverage pre-Transaction); (iii) the remedy package has a similar proportion of stations in cities, a high number of stations in towns and suburbs and lower in rural areas, when compared against MOL's network pre-Transaction; and (iv) the Purchaser's network will have a very similar average number of car islands and also similar services, which indicates that it will have stations similar to what MOL currently has. The remedy proposal thus creates the third most important network in Slovenia under all observed metrics (number of fuel stations, volume and population covered within catchment areas), as shown in Table 14. Furthermore, at local level, the Purchaser's network will replace the lost competitive constraint in all areas, where the market shares were higher than 40%, with 5 percentage point of increment. As a result, post-Transaction MOL will be of a size comparable to OMV Slovenija's actual size, with an addition of only 12 stations representing 24% of overlaps.

Table 14: KPIs across brands (pre- and post- Transaction)

KPI related to fuel stations of interest	Petrol	OMV Slovenija pre-Transaction	MOL pre-Transaction	MOL post-Transaction	Remedy	Maxe n	Logo	Others
Number of fuel stations	275	96	51	108	39	21	7	20
Number of fuel stations - cities	41	11	6	13	4	1	0	2
	15%	11%	12%	12%	10%	5%	0%	10%
Number of fuel stations - towns and suburbs	97	42	19	41	20	9	3	6
	35%	44%	37%	38%	51%	43%	43%	30%
Number of fuel stations - rural areas	137	43	26	54	15	11	4	12
	50%	45%	51%	50%	38%	52%	57%	60%
Population within 15 minutes isochrones	95%	77%	67%	84%	59%	44%	29%	28%

KPI related to fuel stations of interest	Petrol	OMV Slovenija pre-Transaction	MOL pre-Transaction	MOL post-Transaction	Remedy	Maxe n	Logo	Others
B2C motor fuel volume (2021, mn l)	[...] [40-50]%	[...] [30-40]%	[...] [10-20]%	[...] [30-60]%	[...] [10-20]%	[...] [0-5]%	[...] [0-5]%	[...] [0-5]%
Average number of islands - total	4.6	3.7	3	3.4	3.4	3.1	3	2.6
Average number of islands - cars	3.8	3.3	3.0	3.2	3.1	3.1	2.4	2.6

Source: Commission analysis based on population data of Slovenia and station-level data provided by the Parties accompanying “Note on the design and details of the remedy proposal for M.10438 – MOL / OMV Slovenija” submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but trucks-only stations.

- (656) Further, as illustrated in Figure 22, the Commitments ensure that in none of the 85 problematic areas identified by the Commission the following two conditions are cumulatively met: (i) the Parties’ share is above 40%, and (ii) the Parties’ joint share will increase by more than 5 percentage points post-Transaction. As one divested fuel station impacts the Parties’ shares in all catchment areas that intersects with it, the 39 fuel stations included in the Commitments resolve issues identified in the 85 problematic areas. As a result, at local level, in all of the 85 problematic areas, the new entity will face competition from at least two players, Petrol and the Purchaser’s network, recreating the competitive constraint pre-existing before the Transaction.
- (657) The results of the market test of the Commitments were positive as to their suitability to remove the significant impediment to effective competition identified by the Commission in the market for retail fuel supply from non-DARS stations to B2C customers as a result of unilateral non-coordinated effects. In particular, none of the respondents considered that the Commitments were insufficient to solve the competition concerns identified by the Commission.⁷¹⁰
- (658) **Coordinated effects.** As initially notified, the Transaction could lead to a significant impediment to effective competition in the market for retail fuel supply from non-DARS stations to B2B customers as a result of coordinated effects. As mentioned above in more detail, the Purchaser will replace MOL’s role as a third competitive force in the market. As a result, the risk of coordination will not increase post-Transaction. In particular, similarly to MOL’s role pre-Transaction, the Purchaser will act as an external competitive force capable of challenging any potential coordination between Petrol and MOL post-Transaction. The Commitments thus maintain the status quo in terms of competitive dynamics on the market pre-Transaction.
- (659) The results of the market test of the Commitments were positive as to their suitability to remove the significant impediment to effective competition identified by the Commission in the market for retail fuel supply from non-DARS stations to B2C customers as a result of coordinated effects. In particular, none of the respondents

⁷¹⁰ Non-confidential replies to the Market Test, question D1.

considered that the Commitments were insufficient to solve the competition concerns identified by the Commission.⁷¹¹

- (660) In addition, the Commission notes that while the barriers to entry are high for a player that does not have a strong foothold in Slovenia, the possibilities to expand are not inexistent for a player, with a pre-existing national network. In this respect, in view of MOL's strategy prior to the Transaction to acquire smaller competitors, growth through external acquisitions is not impossible in Slovenia. Lastly, if there are high barriers to build new stations, the Commission notes that the Parties are always looking at opportunities to build stations and have built some stations.⁷¹² While these opportunities would be far from being sufficient for a player to enter into the Slovenian market, they are realistic expansion options for a player, with an already strong foothold in Slovenia, as the Purchaser's network will have.
- (661) Based on the results of the market test and the reasons set out above, the Commission considers that the Commitments are suitable to remove the significant impediment to effective competition raised by the Transaction in the market for retail fuel supply from non-DARS stations to B2C customers in respect of unilateral non-coordinated and coordinated effects.

11.3.2. Viability of the divestment business

- (662) The Divestment Business consists of a nationwide retail network of 39 fuel stations in Slovenia, currently operating as part of the fuel station network of MOL and OMV Slovenija. In particular, the Divestment Business includes a versatile portfolio of city and suburban fuel stations with a 15-minute population reach of 59% in Slovenia. The Commission is of the view that the Divestment Business will allow the Purchaser to operate effectively on the Slovenian fuel retail market, where it will be the third largest network in terms of number of fuel stations, volume, and population.
- (663) From a financial standpoint, the Divestment Business remains a profitable business and is in line with the average rentability of OMV Slovenija and MOL's networks. In 2022 the Divestment Business sold [...] million litres of fuel in Slovenia generating sales of EUR [...] million and a forecasted EBITDA of EUR[...] million.⁷¹³ It is worth noting that the revenues in 2022 are artificially low in light of the pricing regulation currently in place in Slovenia, which results in narrower retail fuel margins. The price regulation was introduced by the Slovenian Government following the Russian war of aggression against Ukraine and, as noted in recital (33), there are indications that price regulation may be prolonged and will continue into 2024. Currently, the price regulation applies to fuel stations on-highways only.
- (664) From a qualitative standpoint, the Commission notes that the Divestment Business stations are comparable to the stations that will remain with MOL. In particular, the stations have similar equipment regarding diesel and premium gasoline⁷¹⁴, location near by a supermarket,⁷¹⁵ ATM services⁷¹⁶ and presence of bars.⁷¹⁷ As a result, at

⁷¹¹ Non-confidential replies to the Market Test, question D1.

⁷¹² For example, MOL opened 6 stations between 2012 and 2022. OMV Slovenija has opened [details on the Target's strategic decisions regarding the opening of stations in Slovenia].

⁷¹³ Form RM, Annex 5.

⁷¹⁴ 100% of the stations have premium gasoline and approximately half of them offer premium diesel.

⁷¹⁵ 56% of the stations of the Divestment Business and of MOL are located near a supermarket.

⁷¹⁶ Approximately one-third of the stations of the Divestment Business and of MOL are equipped.

⁷¹⁷ Approximately 60% of the stations of the Divestment Business and of MOL are equipped.

local level, the Divestment Business stations are in a position to exert a significant competitive constraint on the new entity.

- (665) The divestiture will take the form of an asset deal and includes the following necessary assets that will allow for the Purchaser to start effective operations immediately after the closing of the remedy transaction:
- (a) all hydrocarbon inventory of any nature stored in storage tanks at the fuel stations.
 - (b) all non-fuel inventory stored at the fuel stations.
 - (c) real properties and/or buildings which are exclusively used or necessary for the operation of the Divestment Business.
 - (d) all buildings, infrastructure, structures, facilities, fixtures, interconnecting pipes and other improvements in connection with each fuel station.
 - (e) plant, machinery, furniture, equipment, tools, vehicles, stores, spare parts, information technology equipment, communication equipment, safety equipment, preventative maintenance equipment, firefighting equipment and consumables, precious metals and other chattels and equipment in connection with each fuel station.
 - (f) lease and franchise agreements or other agreements linked with the Divestment Business.
 - (g) any tax records required under applicable law, all administrative decisions, documents incorporating a legal title to particular assets, and other information exclusively related to the Divestment Business or necessarily required for the operation of the Divestment Business.
 - (h) business records relating exclusively to the Divestment Business or necessary for the operation of the Divestment Business.
- (666) Further, as part of the Divestment Business, the Purchaser will have the option to:
- (a) in relation to the MOL Divestment Business, [details on the scope of the remedy transaction],⁷¹⁸
 - (b) purchase all non-fuel inventory available at all fuel stations part of the Divestment Business;
 - (c) conclude with a designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the respective fuel stations of the Divestment Business, for the period of 1 year (extendable upon request of the Purchaser by 1-year periods up to a maximum duration of 3 years) from the Closing Date and under standard conditions applied to comparable wholesale customers. In respect of other services that are currently provided to the Divestment Business based on supply or service agreements concluded with third-party providers/suppliers, the Purchaser also has the option to request the respective contact details of such third-party providers/suppliers;
 - (d) in relation to the MOL Divestment Business, benefit from a de-branding period (in relation to changing the branding of the fuel stations from MOL to Shell) of up to 1 year from closing of the Transaction; and

⁷¹⁸ [Details on MOL's contractual obligations].

- (e) copies of such (relevant parts of) documents that do not relate exclusively to the fuel stations part of the Divestment Business but that contain relevant information on and are necessary for the operation of such fuel stations.
- (667) In light of the above, the Commission considers that the transfer of the Divestment Business can be carried out with minimal risks of disruption to the operation of the business, in a short period of time, and that the Divestment Business will have all the resources necessary to operate on a stand-alone basis and compete effectively with the new entity on a lasting basis.
- (668) The Commission's assessment was confirmed by the results of the market test: all respondents indicated that the Commitments include all the assets needed to operate the fuel stations part of the Divestment Business⁷¹⁹, and that the Divestment Business is a viable business that the Purchaser will be able to operate on a lasting basis.⁷²⁰
- (669) In light of the above, the Commission considers that the Divestment Business is viable and competitive.

11.3.3. Conclusion on the Proposed Commitments

- (670) On the basis of the assessment described above and in light of the outcome of the market investigation and the information made available to it, the Commission considers that the Divestment Business is suitable to remove the serious doubts as to the compatibility of the Transaction with the internal market in respect of the market for retail fuel supply from non-DARS stations to B2C customers in Slovenia, and that it consists of the divestment of a viable and competitive business.

12. PURCHASER APPROVAL

12.1. Assessment of the suitability of the purchaser

12.1.1. Framework of the Commission's assessment of the purchaser

- (671) As mentioned above, on 9 March 2023 MOL and the Purchaser entered into an SPA pursuant to which the latter irrevocably undertook to acquire the Divestment Business, upon the terms and subject to the conditions set out in the SPA.
- (672) Paragraph 56 of the Remedies Notice provides for situations when Parties identify and enter into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure (fix-it-first remedy). In this case, the Commission will be able to decide in the final decision whether the transfer of the divested business to the identified purchaser will remove the competition concerns. Under the fix it first assessment, if the Commission authorises the notified concentration, no additional Commission decision for the purchaser approval will be needed and the closing of the sale of the divested business may take place shortly afterwards.
- (673) Against this background, the Commission has assessed whether the proposed buyer of the fix-it-first remedy would fulfil the standard purchaser criteria as set out in the Remedies Notice,⁷²¹ and most notably if:
 - (a) the purchaser is independent of and unconnected to the parties;

⁷¹⁹ Non-confidential replies to the Market Test, question E3.

⁷²⁰ Non-confidential replies to the Market Test, question E9.

⁷²¹ Remedies Notice, paragraph 48.

- (b) the purchaser possesses the financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business as a viable and active competitive force in competition with the parties and other competitors; and
- (c) the acquisition of the business by a proposed purchaser is neither likely to create new competition problems nor to give rise to a risk that the implementation of the commitments will be delayed. Therefore, the proposed purchaser should be reasonably expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the business to be divested.

12.1.2. The purchaser is independent and unconnected to the parties

- (674) The Notifying Party submits that the Purchaser is in every aspect fully independent from MOL Group. The Purchaser belongs to the Shell Group, one of the largest global groups of energy and petrochemical companies with more than 80,000 employees in more than 70 countries. The Shell Group is headed by Shell Plc, a listed public limited company. MOL Group has no ownership in or any joint ventures with any of the companies belonging to the Shell Group, and vice-versa, the Shell Group has no shareholding in or any other structural connection with MOL Group.
- (675) As regards supply relations, the only existing relations between MOL Group and the Shell Group relate to [details on MOL's business relations to Shell in the CEE region].
- (676) In view of the above, considering that Shell Group is operating their fuel stations in Slovenia with no supply dependency on MOL, as well as in view of the possibility to source additional supplies either from the sea or from Austria or even from Shell's German refineries, the Notifying Party is of the view that there are no connections with the Purchaser that could impair the economic independence of the parties.
- (677) On the basis of the information made available to the Commission, the Commission is of the view that the links between the Purchaser and MOL Group are not material and, as a result, the Purchaser is independent and unconnected to the Parties.

12.1.3. The purchaser has sufficient financial resources, proven relevant expertise and has the incentive and ability to maintain and develop the divested business.

- (678) The Notifying Party submits that Shell Group is one of the largest global players in the oil and gas industry that possesses the necessary financial resources to finance the Transaction and to further develop and operate the Divestment Business in Slovenia.
- (679) Further, the Notifying Party is of the view that the Purchaser, controlled by the Shell Group, is an industrial investor, successfully operating fuel station networks in many countries, and being present on the Slovenian market with one B2C fuel station and 8 fuel stations that operate as trucks-only stations. The Notifying Party considers that given the size, financial resources and know-how of the Shell Group, the Purchaser will have both the incentive and ability to maintain and develop the Divested Business as a viable and active competitive force in competition with MOL Group and other competitors. The Shell brand is widely known, among others also in Slovenia, and the Notifying Party considers that the Purchaser and Shell Group will act to maintain the value of the brand by offering premium services and products to Slovenian customers from the fuel stations of the Divestment Business at competitive prices, as the Shell Group does in many other countries worldwide.

- (680) In light of the above, the Commission is of the view that the Purchaser: (i) has sufficient resources to maintain and develop the Divested Business – Shell Group’s worldwide revenues amounted to EUR 157.36 billion in 2020; (ii) has the relevant expertise to maintain and develop the Divestment Business – it belongs to a wider global group of energy and petrochemical companies and Shell’s fuel retail network is the world’s largest, with around 45,000 fuel stations in more than 80 countries; and (iii) has the incentive and ability to maintain and develop the divested business – not only has the expertise and know-how necessary, but its brand is widely known in Slovenia and Shell already has an established foothold in the country with 9 fuel stations.

12.1.4. The acquisition will not create prima facie competition concerns

- (681) The Notifying Party submits that the acquisition of the Divestment Business by the Purchaser will not raise any prima facie competition problems as Shell Group is present in Slovenia only by one B2C station and 8 trucks-only stations. The minimal overlap between the Divestment Business and Shell Group's existing Slovenian business does not create any competition concerns. There are also no vertical connections between the MOL Group and the Purchaser's Group that could lead to any vertically affected markets.
- (682) In light of the information made available to the Commission, the Commission is of the view that the acquisition of the Divestment Business by the Purchaser will not create prima facie competition concerns. From a horizontal standpoint, post-acquisition of the Divestment Business, in the market for retail fuel supply from non-DARS stations to B2C customers, Shell’s market shares would amount to [10-20]% in volumes and 9% number of stations. MOL market shares would amount to [30-40]% in volumes and 23% in number of stations while Petrol’s market shares would amount to [...] % in volumes and 59% in number of stations. As explained above in more detail, Shell will become a significant third player on the national market in Slovenia that will act as a strong competitive force capable of exerting competitive pressure on the new entity. Further, it will replace MOL’s role as a third competitive force in the market – the Purchaser will have a network of 40 B2C stations (and 8 trucks-only stations), which constitutes 78.4%⁷²² of MOL’s pre-Transaction share in the market for retail fuel supply from non-DARS stations to B2C customers. This means that the sale of the Divestment Business to Shell will not materially impact the current competitive dynamics in the market. From a vertical standpoint, the Commission is not aware of any vertical connections between the MOL Group and the Purchaser's Group that could lead to any vertically affected markets.

12.1.5. Conclusion on suitability of the purchaser

- (683) In the light of the above, the Commission concludes that the Purchaser is a suitable purchaser for the Divestment Business and therefore no additional buyer approval decision is necessary.

12.1.6. Results of the market test

- (684) The Commission sent out a questionnaire focused on the Slovenian market for the retail supply of fuel in the B2C segment (from non-motorway fuel stations) to competitors of the Parties in Slovenia. The market test concerned the suitability of

⁷²² This market share relates only to the B2C segment, and it does not factor in Shell’s 8 trucks-only stations.

the remedy package offered by MOL to remove the competition concerns raised by the Transaction.

- (685) The responses to the market test were overall positive. None of the respondents considered that the Commitments were insufficient to solve the competition concerns identified by the Commission. Further, the vast majority of respondents indicated that the Commitments would allow the Purchaser to compete effectively on a lasting-basis with the new entity, and that the assets included in the Divestment Business were sufficient to operate the fuel stations part of the Divestment Business. Lastly, a majority of respondents also indicated that the Purchaser met the purchaser criteria set out above.

12.2. Assessment of the proposed agreement

- (686) As mentioned in recital (650)(650), on 9 March 2023 MOL and Shell entered into an SPA pursuant to which the latter irrevocably undertook to acquire the Divestment Business, upon the terms and subject to the conditions set out in the SPA. The present Decision is based upon the assumption that the terms of the SPA will not be renegotiated.
- (687) The Commission takes the view that the SPA is compliant with the Commitments, for the reasons set out in the following recitals.
- (688) The business object of the sale and purchase provided for by in the SPA correspond to that of the Divestment Business as defined in the Commitments. Particularly it comprises:
- (a) all tangible assets necessary to the operation of the Divestment Business;
 - (b) any licences, permits and authorisations that are transferred together with real estate by virtue of Slovene law; and
 - (c) all contracts, leases, commitments, and customer orders of the Divestment Business, as well as all customer, credit, and other records of the Divestment Business if reasonably necessary for the divestment of the Divestment Business and if available and lawfully transferrable to the Purchaser.
- (689) In addition, it is also provided for in the SPA that the Purchaser will have the option to purchase all hydrocarbon inventory⁷²³ and non-fuel inventory⁷²⁴ available at the respective fuel stations of the Divestment Business at the Closing Date.
- (690) Further, it is also provided in the SPA that the Purchaser will have the option to conclude with MOL Slovenija or another designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the fuel stations of the Divestment Business under standard conditions applied to comparable wholesale customers.⁷²⁵
- (691) The SPA also states that in respect of other services that are currently provided to the Divestment Business based on supply or service agreements concluded with third-party providers/suppliers, MOL shall provide to the Purchaser, upon request, the respective contact details of such third-party providers/suppliers.

⁷²³ Means all hydrocarbon inventory of any nature which will be stored in storage tanks at the relevant fuel station, including all liquid petroleum gases, gasolines, diesel exhaust fluid and other petroleum products of any nature stored in storage tanks.

⁷²⁴ Means all non-fuel inventory which will be stored at the given fuel station.

⁷²⁵ Shell chose not to exercise this right.

- (692) The SPA is also in line with the Commitments in relation to timing: the transfer of the legal title of the Divestment Business to the Purchaser must occur within 6 months after the Commission has approved the acquisition of OMV Slovenija by MOL.
- (693) As regards the preservation of viability, marketability and competitiveness of the Divestment Business, pursuant to the SPA, MOL shall ensure that the stations part of the Divestment Business are operated in accordance with past practice and in the same manner as they were operated in the 12 months prior to the signing of the SPA. Further, MOL and the Purchaser shall, during the period between the signing of the SPA and the Closing Date, co-operate with a view to avoiding any material adverse effect on the condition, situation, rights, obligations, contracts, and operations of the Divestment Business.

12.3. Conclusion on the proposed purchaser and agreement

- (694) On the basis of the above assessment, the Commission approves the Purchaser as a suitable purchaser for the above-mentioned reasons.
- (695) On the basis of the SPA, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

13. CONDITIONS AND OBLIGATIONS

- (696) Pursuant to Article 8(2), second subparagraph, of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (697) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (698) In accordance with the basic distinction described in the previous recital as regards conditions and obligations, this Decision should be made conditional on the full compliance by the Notifying Party with Section B of the Commitments submitted by the Notifying Party on 17 March 2023 and all other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Commitments is attached as an Annex to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration whereby MOL Hungarian Oil and Gas Plc. acquires sole control of OMV SLOVENIJA, trgovina z nafto in naftnimi derivati, d.o.o. within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Sections B and C of Annex 2.

Article 3

MOL Hungarian Oil and Gas Plc. shall comply with the obligations set out in Sections B and C of Annex 2.

Article 4

This Decision is addressed to:

MOL Hungarian Oil and Gas Plc.

Október huszonharmadika u. 18.

1117 Budapest

Hungary

Done at Brussels, 17.5.2023

For the Commission

(Signed)

Margrethe VESTAGER

Executive Vice-President

ANNEX 1

Table 1: Characteristics of problematic areas, as identified in the local assessment

Brand	Station ID	Market shares - MOL pre-merger	Market shares - OMV pre-merger	Market shares - MOL post-merger	Increment in market shares (p.p.)	HHI - pre-merger	HHI - post-merger	HHI - delta
MOL	0302	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,000-1,500]
MOL	0303	[40-50]%	[20-30]%	[70-80]%	[20-30]			[2,000-2,500]
MOL	0304	[50-60]%	[10-20]%	[70-80]%	[10-20]			[1,500-2,000]
MOL	0305	[20-30]%	[30-40]%	[60-70]%	[20-30]			[1,400-1,900]
MOL	0306	[30-40]%	[30-40]%	[60-70]%	[30-40]			[1,500-2,000]
MOL	0307	[30-40]%	[10-20]%	[50-60]%	[10-20]			[1,000-1,500]
MOL	0308	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
MOL	0309	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
MOL	0310	[30-40]%	[30-40]%	[60-70]%	[30-40]			[1,800-2,300]
MOL	0317	[20-30]%	[20-30]%	[50-60]%	[20-30]			[800-1,800]
MOL	0321	[10-20]%	[70-80]%	[70-80]%	[10-20]			[1,400-1,900]
MOL	0322	[10-20]%	[30-40]%	[50-60]%	[10-20]			[1,000-1,500]
MOL	0323	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
MOL	0324	[10-20]%	[20-30]%	[40-50]%	[10-20]			[400-900]
MOL	0325	[10-20]%	[70-80]%	[80-90]%	[10-20]			[1,500-2,000]
MOL	0328	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,000-1,500]
MOL	0329	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
MOL	0330	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,300-1,800]
MOL	0332	[30-40]%	[30-40]%	[60-70]%	[30-40]			[1,800-2,300]
MOL	0333	[40-50]%	[20-30]%	[60-70]%	[20-30]			[1,900-2,400]
MOL	0335	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
MOL	0336	[10-20]%	[50-60]%	[70-80]%	[10-20]			[1,900-2,400]
MOL	0337	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,300-1,800]
MOL	0339	[20-30]%	[20-30]%	[50-60]%	[20-30]			[800-1,300]
MOL	0341	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
MOL	0352	[30-40]%	[10-20]%	[40-50]%	[10-20]			[1,00-1,500]
MOL	0354	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
MOL	0400	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
MOL	0401	[10-20]%	[40-50]%	[50-60]%	[10-20]			[800-1,300]
MOL	0402	[40-50]%	[10-20]%	[50-60]%	[10-20]			[800-1,300]
MOL	0403	[20-30]%	[20-30]%	[50-60]%	[20-30]			[900-1,400]
MOL	0407	[20-30]%	[30-40]%	[60-70]%	[20-30]			[1,900-2,400]
MOL	0408	[10-20]%	[20-30]%	[40-50]%	[10-20]			[400-900]
OMV	O3404	[5-10]%	[30-40]%	[40-50]%	[5-10]			[300-800]

Brand	Station ID	Market shares - MOL pre-merger	Market shares - OMV pre-merger	Market shares - MOL post-merger	Increment in market shares (p.p.)	HHI - pre-merger	HHI - post-merger	HHI - delta
OMV	O3407	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,300-1,800]
OMV	O3415	[10-20]%	[70-80]%	[90-100]%	[10-20]			[1,300-1,800]
OMV	O3418	[40-50]%	[10-20]%	[60-70]%	[10-20]			[1,000-1,500]
OMV	O3420	[5-10]%	[60-70]%	[70-80]%	[5-10]			[600-1,100]
OMV	O3425	[30-40]%	[20-30]%	[50-60]%	[20-30]			[600-1,100]
OMV	O3435	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
OMV	O3449	[30-40]%	[30-40]%	[60-70]%	[30-40]			[1,800-2,300]
OMV	O3450	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
OMV	O3451	[10-20]%	[40-50]%	[60-70]%	[10-20]			[800-1,300]
OMV	O3454	[10-20]%	[70-80]%	[80-90]%	[10-20]			[1,500-2,000]
OMV	O3455	[10-20]%	[20-30]%	[40-50]%	[10-20]			[400-900]
OMV	O3457	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,300-1,800]
OMV	O3458	[10-20]%	[30-40]%	[50-60]%	[10-20]			[1,100-1,600]
OMV	O3460	[5-10]%	[30-40]%	[40-50]%	[5-10]			[300-800]
OMV	O3462	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
OMV	O3464	[20-30]%	[40-50]%	[60-70]%	[20-30]			[1,600-2,100]
OMV	O3465	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
OMV	O3470	[10-20]%	[20-30]%	[40-50]%	[10-20]			[400-900]
OMV	O3473	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3474	[20-30]%	[30-40]%	[50-60]%	[20-30]			[1,200-1,700]
OMV	O3475	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
OMV	O3476	[10-20]%	[70-80]%	[90-100]%	[10-20]			[2,400-2,900]
OMV	O3479	[10-20]%	[70-80]%	[80-90]%	[10-20]			[1,500-2,000]
OMV	O3482	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3484	[10-20]%	[20-30]%	[40-50]%	[10-20]			[400-900]
OMV	O3487	[50-60]%	[20-30]%	[70-80]%	[20-30]			[2,100-2,600]
OMV	O3493	[5-10]%	[70-80]%	[70-80]%	[5-10]			[700-1,200]
OMV	O3494	[30-40]%	[30-40]%	[60-70]%	[30-40]			[1,800-2,300]
OMV	O3496	[20-30]%	[40-50]%	[60-70]%	[20-30]			[1,600-2,100]
OMV	O3497	[20-30]%	[20-30]%	[50-60]%	[20-30]			[1,000-1,500]
OMV	O3502	[10-20]%	[30-40]%	[40-50]%	[10-20]			[1,600-2,100]
OMV	O3505	[40-50]%	[20-30]%	[60-70]%	[20-30]			[1,600-2,100]
OMV	O3506	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
OMV	O3512	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3513	[10-20]%	[70-80]%	[90-100]%	[10-20]			[2,400-2,900]
OMV	O3518	[5-10]%	[70-80]%	[80-90]%	[5-10]			[800-1,300]
OMV	O3519	[10-20]%	[60-70]%	[80-90]%	[10-20]			[2,000-2,500]
OMV	O3520	[10-20]%	[70-80]%	[80-90]%	[10-20]			[1,500-2,000]

Brand	Station ID	Market shares - MOL pre-merger	Market shares - OMV pre-merger	Market shares - MOL post-merger	Increment in market shares (p.p.)	HHI - pre-merger	HHI - post-merger	HHI - delta
OMV	O3523	[20-30]%	[60-70]%	[80-90]%	[20-30]			[2,500-3,000]
OMV	O3524	[10-20]%	[60-70]%	[80-90]%	[10-20]			[1,300-1,800]
OMV	O3525	[10-20]%	[60-70]%	[80-90]%	[10-20]			[1,300-1,800]
OMV	O3530	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3534	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
OMV	O3535	[30-40]%	[20-30]%	[50-60]%	[20-30]			[1,200-1,700]
OMV	O3539	[20-30]%	[30-40]%	[60-70]%	[20-30]			[1,300-1,800]
OMV	O3541	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3546	[10-20]%	[30-40]%	[40-50]%	[10-20]			[600-1,100]
OMV	O3552	[20-30]%	[20-30]%	[40-50]%	[20-30]			[800-1,300]
OMV	O3553	[20-30]%	[10-20]%	[40-50]%	[10-20]			[400-900]
OMV	O3601	[10-20]%	[70-80]%	[80-90]%	[10-20]			[1,500-2,000]
OMV	O3607	[5-10]%	[30-40]%	[40-50]%	[5-10]			[300-800]

Source: Commission analysis based on station-level data provided by the Parties accompanying “Note on the design and details of the remedy proposal for M.1048 – MOL / OMV Slovenija” submitted by the Notifying Party on 14 November 2022. Non-DARS, B2C, all but truck-only stations. Brand-specific average volume motor fuels in 2021.

Case M.10438 – MOL / OMV Slovenija

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), MOL Hungarian Oil and Gas Plc. (the "**Notifying Party**" or "**MOL**") hereby enters into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering MOL's acquisition of sole control over OMV Slovenija (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 and described more in detail in Schedules A-B.

Business Information: means, in relation to the Divestment Business, any tax records required under applicable law, all administrative decisions (including any permits, licenses), documents incorporating a legal title to particular assets and other information exclusively related to the Divestment Business (for the avoidance of doubt, excluding all tax accounts (other than any tax records strictly required under applicable law) and customer lists) or necessarily required for the operation of the Divestment Business in the Ordinary Course of Business and exist at the Completion Date.

Business Information Technology Systems: means all software, network, computer programs, databases systems and information contained on any hardware and equipment and/or other information technology owned by a member of the Seller's Group as well as services relating to

all of the aforementioned and to any other aspect of the Divestment Business data processing or other technology requirements, including software development, support or maintenance, consultancy, source code deposit, recovery and network services, facilities management or hardware maintenance, but excluding any physical technology systems, components, telecommunications, hardware, equipment and network equipment.

Business Leases: means lease and franchise agreements or other agreements as listed in **Part 3 of Annex A.2 of Schedule A** and in **Part 3 of Annex B.2 of Schedule B**;

Business Properties: means real properties and/or buildings, which are owned by the Business Sellers and exclusively used for the operation of the Divestment Business or necessary for the operation of the Divestment Business as listed in **Part 2 of Annex A.2 of Schedule A** and in **Part 2 of Annex B.2. of Schedule B**.

Business Records: means all books and records of any Business Seller in whatever form (including computer disks or tapes) containing or relating to Business Information or on which Business Information is recorded or stored relating exclusively to the Divestment Business or necessary for the operation of the Divestment Business, but excluding the Excluded Business Records;

Business Sellers: means (a) in respect of the OMV Divestment Business, OMV Slovenija; and (b) in respect of the MOL Divestment Business, Mol Slovenija.

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

Closing Period: the period of [details of the Remedy SPA on the Closing Period] from the Effective Date.

Completion Date: means the date on which the Completion occurs.

Completion means the completion of the actions under clauses 7.4 and 7.5 of the Remedy SPA attached as **Schedule C**.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Consortium Agreement: [details on MOL's contractual arrangements concerning the consortium agreement for the Action "Next-E" 2016-EU-TMC-0350_S in the field of the Connecting Europe Facility (CEF) - Transport Sector concluded on 31.10.2017]

Decision: the Decision of the European Commission approving the proposed Concentration.

Divestment Business: the businesses as defined in Section B and in Schedules A-B which MOL commits to divest.

Effective Date: the date of adoption of the Decision.

Excluded Business Assets means:

- (a) all assets, properties or rights owned or held by the Seller and the Business Sellers used exclusively or predominantly in connection with the Seller and Business Sellers' businesses other than in connection with the Divestment Business and not necessary for the operation of the Divestment Business;
- (b) all arrangements, commitments, agreements, contracts or engagements entered into prior to the Completion Date by a member of the Seller's Group with third parties in connection with the Divestment Business including contracts concerning purchasing, supply and other services provided to the Divestment Business and to other businesses operated by a member of the Seller's Group (but excluding always each Business Lease);
- (c) all Intellectual Property of the Business Sellers and of any Seller's Group member;
- (d) all cash and cash equivalents on hand (including cashier) or in the bank;
- (e) all Business Information Technology Systems;
- (f) the benefit of any loans due to the Seller from other members of the Seller's Group;
- (g) any and all insurance policies and all rights, titles, claims and interests of the Seller and Business Sellers and any member of the Seller's Group under any policy document, agreement of insurance, group insurance policy, or to any insurance proceeds relating thereto;
- (h) all tax credits, reliefs, repayments and any similar tax benefits or savings of the Seller and the Business Sellers including the right of the Seller and the Business Sellers or the representative member of its VAT group to reclaim input VAT;
- (i) the benefit of all disputes, claims, actions and proceedings involving the Seller and the Business Sellers;
- (j) any assets owned by third party suppliers; and
- (k) the Excluded Business Records.

Excluded Business Records: means all statutory books, accounting records and other records and information of any Business Seller existing at or before the Completion Date (including those relating to tax) which does not exclusively relate to the Divestment Business and which is not necessarily required for the conduct and operation of the Divestment Businesses in the ordinary course by the Purchaser in a manner consistent to the conduct and operation of the Divestment Business by the Business Sellers in the last 12 (twelve) months preceding the Completion Date.

Fuel Station: any one of the fuel stations that form part of the MOL Divestment Business or of the OMV Divestment Business.

Fixed Plant: means all buildings, infrastructure, structures, facilities, fixtures, interconnecting pipes and other improvements owned by the Business Sellers and registered in the relevant plant register maintained by the Business Sellers in connection with each Fuel Station, as listed in **Part 1 of Annex A.2 of Schedule A** and in **Part 1 of Annex B.2 of Schedule B**, (except where the column "Not transferred assets marked with X" is ticked), such schedule to be updated at handover in accordance with clause 7.6 of the Remedy SPA. Notwithstanding the items listed in the above referred Annexes, the following items will not be included in the Fixed Plant: [details on MOL's contractual obligations under the Remedy SPA].

Hold Separate Manager: the person appointed by MOL to oversee the management of the MOL and OMV Divestment Businesses in the best interest of the Divestment Business under the supervision of the Monitoring Trustee, to ensure the continued economic viability, marketability and competitiveness of the Divestment Business and compliance with the present Commitments. The Hold Separate Manager shall be independent from the Parties and appointed on a contractual basis for the duration between the Effective Date and Closing or the handover of each Fuel Station, whichever the later, with an option for the Purchaser to extend the mandate of the Hold Separate Manager under the terms agreed between the Purchaser and the Hold Separate Manager.

Hydrocarbon Inventory: means all hydrocarbon inventory of any nature as at the relevant Handover Date which will be stored in storage tanks at the relevant Petrol Station, including all liquid petroleum gases, gasolines, diesel exhaust fluid and other petroleum products of any nature stored in storage tanks.

Loose Plant and Equipment means the plant, machinery, furniture, equipment, tools, vehicles, stores, spare parts, information technology equipment (including servers, personal computers, laptops and printers but excluding any Business Information Technology Systems), communication equipment (including telephones and operator radios), safety equipment, preventative maintenance equipment, firefighting equipment and consumables, precious metals and other chattels and equipment that are owned by the Business Sellers and registered in the relevant plant register maintained by the Business Sellers in connection with each Fuel Station, as listed in **Part 1 of Annex A.2 of Schedule A** and in **Part 1 of Annex B.2 of Schedule B**, (except where the column "Not transferred assets marked with X" is ticked), such Annexes to be updated and provided at handover in accordance with clause 7.6 of the Remedy SPA. Notwithstanding the items listed in the above referred Annexes, the following items will not be included in the Loose Plant and Equipment: [details on MOL's contractual obligations under the Remedy SPA].

MOL: MOL Hungarian Oil and Gas Plc, incorporated under the laws of Hungary, with its registered office at Dombóvári út 28, 1117 Budapest, Hungary and registered with the Budapest Company Register under number 01-10-041683.

MOL Divestment Business: the business defined in Schedule A which MOL commits to divest.

MOL Slovenija: MOL Slovenija d.o.o. incorporated under the laws of Slovenia, with its registered office at Ulica arhitekta Novaka 6, SI -9000 Murska Sobota, Slovenia and registered with the Slovene commercial and court register under number 5952441000.

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

Non-fuel Inventory: means all non-fuel inventory of as at the relevant Handover Date which will be stored at the given Fuel Station.

Ordinary Course of Business means the ordinary and usual course of the day-to-day operations of the Divestment Business conducted in compliance with all applicable laws and in accordance with the past practices of the Divestment Business as conducted by the given Business Seller (as applicable).

OMV Divestment Business: the business defined in Schedule B which MOL commits to divest.

OMV Slovenija: incorporated under the laws of Slovenia, with its registered office at Ulica 15. maja 19, 6000 Koper - Capodistria, Slovenia and registered with the Slovene commercial and court register under number 5540739000.

Parties: the Notifying Party and OMV Slovenija.

Purchaser: Shell Adria d.o.o. with its registered seat: Bravnicarjeva ulica 13 1000 Ljubljana; company registration number: 1414321000; tax number: SI 161596582..

Purchaser Criteria: the criteria laid down in paragraph 15 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Remedy SPA: the final binding Assets Sale and Purchase Agreement dated 09 March 2023 and entered into between MOL Slovenia Downstream Investment B.V. and the Purchaser as attached in Schedule C.

Schedule: schedules A-B-C to these Commitments describing more in detail the Divestment Business and containing the Remedy SPA.

Seller: MOL Slovenia Downstream Investment B.V. with its corporate seat in Amsterdam, the Netherlands and business address at Muiderstraat 1, 1011PZ Amsterdam, registered with the Dutch trade register under 60167084, and acting as the Seller in the Remedy SPA.

Signing Date: means the date when the Remedy SPA has been signed by all parties to the Remedy SPA.

Trustee(s): the Monitoring Trustee.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, MOL commits to divest, or procure the divestiture of the Divestment Business by the end of the Closing Period to the Purchaser on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16 of these Commitments.
3. The proposed Concentration shall not be implemented before MOL has entered into a final binding sale and purchase agreement for the sale of the Divestment Business with the Purchaser and the Commission has approved the final terms of sale in accordance with paragraph 16. For the avoidance of doubt, notwithstanding paragraphs 3 and 4 of the present commitment, the proposed Concentration can be implemented before Closing, provided that the Commission has granted its approval to the final terms of sale in accordance with paragraph 16 and MOL has entered into a final binding sale and purchase agreement for the sale of the Divestment Business with the Purchaser.
4. MOL shall be deemed to have complied with this commitment if:
 - (a) MOL has entered into a final binding sale and purchase agreement with the Purchaser and the Commission approves the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 16; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period. [Details on the time period for the handover of the Fuel Stations and regarding the transfer of the EV-chargers].
5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 37 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed Concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of a nation-wide retail network of 39 fuel stations in Slovenia, currently operating as part of the fuel station networks of MOL Slovenija and of OMV Slovenija, respectively. The legal and functional structure of the Divestment Business as operated to date is described in Schedule A (MOL Divestment Business) and Schedule B (OMV Divestment Business) as well as in Schedule C (Remedy SPA) which precisely defines the perimeter of the Remedy Transaction. The Divestment Business includes all assets that are necessary to ensure the viability and competitiveness of the Divestment Business, in particular, as and to the extent provided for in the Remedy SPA:
 - (a) all tangible assets;
 - (b) any licences, permits and authorisations that are transferred together with real estate by virtue of Slovene law; and
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business, as well as all customer, credit and other records of the Divestment Business if reasonably necessary for the divestment of the Divestment Business and if available and lawfully transferrable to the Purchaser. [Details on the scope of MOL's contractual obligations under the Remedy SPA].
7. In addition, the Divestment Business includes the benefit - if so required by the Purchaser - to purchase all Hydrocarbon Inventory and Non-fuel Inventory available at the respective Fuel Stations of the Divestment Business at the Closing, as set out in Sections 3.3-3.4 of the Remedy SPA.
8. Further, the Divestment Business includes the benefit for the Purchaser, which however does not have to be used by the Purchaser, to conclude with MOL Slovenija or another designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the respective Fuel Stations of the Divestment Business, [Details on the duration and the conditions of MOL's temporary supply agreement offered to the Purchaser]. Strict firewall procedures will be adopted regarding the conclusion and operation of any logistics and supply agreement with the Purchaser so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements will not be shared with, or passed on to, anyone outside the relevant business unit of MOL or its Affiliated Undertakings responsible for supplying the relevant products and/or services (the business unit including for the avoidance of doubt the persons authorised to sign on behalf of MOL or its Affiliated Undertakings the relevant supply contracts as well as MOL Group level employees involved in the approval of the supply contracts and conditions as well as invoicing and accounting). In respect of other services that are currently provided to the Divestment Business based on supply or service agreement concluded with third-party providers/suppliers, MOL commits to provide to the Purchaser, upon request and insofar as permitted by the applicable competition laws, the respective contact details of third-party providers/suppliers.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing or until the handover of the last Fuel Station of the Divestment Business to the Purchaser (whichever the latter), the Notifying Party - and until the Closing of the Concentration, with respect to the OMV Divestment Business, OMV Slovenia - shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, MOL - and until the Closing of the Concentration, with respect to the OMV Divestment Business, OMV Slovenia - undertakes:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; in particular, [details on the Parties' pricing obligations under the Commitments.]
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
 - (c) to allow the Purchaser access to the operators of the Fuel Stations that operate the Divestment Business ("**Operators**") sufficiently in advance and [details on the Parties' obligations under the Commitments as regards Operators].

Hold-separate obligations

10. The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Business is kept under the supervision of the Monitoring Trustee and the Hold Separate Manager as much as possible separate from the businesses that the Notifying Party will retain, and after Closing, the Notifying Party destroys confidential information on the Divestment Business. Until Closing, MOL - and until the closing of the Concentration also OMV Slovenia - shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a saleable asset that could be separated in the divestment process. Immediately from the Effective Date, MOL and OMV Slovenia each shall appoint a Hold Separate Manager, who shall be independent from the Parties. The Hold Separate Manager shall oversee the management of the Divestment Business in the best interest of the business with a view to ensuring compliance with the obligations set out in paragraph 9, above, and to ensuring its continued economic viability, marketability and competitiveness. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in these Commitments. The Commission may, after having heard MOL and/or OMV Slovenia, require MOL and/or OMV Slovenia to replace the Hold Separate Manager.

Ring-fencing

11. The Notifying Party shall implement, or procure to implement, all necessary measures to ensure that as far as it is possible and reasonably feasible, it does not, after the Effective Date, obtain any

Confidential Information proprietary exclusively to the Divestment Business and that any such Confidential Information obtained by the Notifying Party before the Effective Date will be eliminated and not be used by the Notifying Party. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent reasonably possible, without compromising the viability of the Divestment Business. The Notifying Party may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Notifying Party is required by law. After Closing (or the handover of each Fuel Station, whichever the later), the Notifying Party shall destroy confidential information on the Divestment Business unless the retention of the relevant information is required by law.

Due diligence

12. In order to enable the Purchaser to carry out a reasonable due diligence of the Divestment Business, MOL - and until the Closing of the Concentration, with respect to the OMV Divestment Business, OMV Slovenia - shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to the Purchaser sufficient information as regards the Divestment Business; and
 - (b) provide to the Purchaser sufficient information relating to the Operators of the relevant Fuel Stations and allow reasonable access to such Operators.

Reporting

13. MOL shall submit written reports in English language on developments in the Closing preparations with the Purchaser to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
14. MOL shall inform the Commission and the Monitoring Trustee on the Closing preparations and shall submit a copy of any agreement entered into with the Purchaser regarding the divestment of the Divestiture Business and regarding Closing.

Section D. The Purchaser

15. MOL confirms that the Purchaser, to its best knowledge, fulfils the following criteria:

- (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
- (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

16. The final binding sale and purchase agreement as well as any ancillary agreements relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. In order for the Commission to approve the purchaser and the final binding sale and purchase agreement (as well as ancillary agreements) in its Decision, MOL commits to submit a fully documented and reasoned proposal, including a copy of the final agreement(s) in due time. MOL must be able to demonstrate to the Commission that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval of the final sale and purchase agreement attached in Schedule C (as well as any ancillary agreements) relating to the divestment of the Divestment Business, the Commission shall verify that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets, or by substituting one or more Assets with one or more different assets, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the Purchaser.

Section E. Trustee

I. Appointment procedure

17. MOL shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.

18. The Trustee shall:

- (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
- (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
- (iii) neither have nor become exposed to a Conflict of Interest.

19. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by MOL

20. No later than two weeks after the Effective Date, MOL shall submit the name or names of one or more natural or legal persons whom MOL proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 18 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

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

New proposal by MOL

22. If all the proposed Trustees are rejected, MOL shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 21 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

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

Duties and obligations of the Monitoring Trustee

25. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by MOL with the conditions and obligations attached to the Decision. To that end, the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with paragraphs 9 and 10 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, and supervise the process of Closing preparations with the Purchaser; and
 - (c) monitor the splitting of assets between the Divestment Business and MOL or Affiliated Undertakings;
- (iii) propose to MOL such measures as the Monitoring Trustee considers necessary to ensure MOL's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business;

- (iv) review and assess the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
 - (a) the Purchaser receives sufficient and correct information relating to the Divestment Business and the Operators; and
 - (b) the Purchaser is granted reasonable access to the Operators;
- (v) act as a contact point for any requests by third parties, in particular the Purchaser, in relation to the Commitments;
- (vi) provide to the Commission, sending MOL a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process;
- (vii) promptly report in writing to the Commission, sending MOL a non-confidential copy at the same time, if it concludes on reasonable grounds that MOL is failing to comply with these Commitments;
- (viii) within one week after receipt of the documented proposal referred to in paragraph 16 of these Commitments, submit to the Commission, sending MOL a non-confidential copy at the same time, a reasoned opinion as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the Purchaser; and
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision, in particular monitoring the pricing of the Fuel Stations of the Divestment Business with the assistance of the Hold Separate Manager to ensure compliance with the commitment referred to in paragraph 9a) of these Commitments.

III. Duties and obligations of the Parties

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

27. MOL shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. MOL shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to the Purchaser in the due diligence procedure. MOL shall inform the Monitoring Trustee on all developments in the divestiture process.
28. MOL shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to MOL for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of MOL, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to MOL's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should MOL refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard MOL. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 of these Commitments shall apply *mutatis mutandis*.
30. MOL agrees that the Commission may share Confidential Information proprietary to MOL with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
31. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
32. For a period of 10 years from the Effective Date, the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

33. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and MOL, require MOL to replace the Trustee;
or
 - (b) MOL may, with the prior approval of the Commission, replace the Trustee.

34. If the Trustee is removed according to paragraph 33 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-23 of these Commitments.
35. Unless removed according to paragraph 33 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

36. The Commission may extend the time periods foreseen in the Commitments in response to a request from MOL or, in appropriate cases, on its own initiative. Where MOL requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time, send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall MOL be entitled to request an extension within the last month of any period.
37. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

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

[signed]
duly authorised for and on behalf of

MOL Hungarian Oil and Gas Plc.

SCHEDULES AND ANNEXES TO THE COMMITMENTS

SCHEDULE A

MOL Divestment Business

- 1 The MOL Divestment Business comprises of a nation-wide network of 20 fuel stations operated [details on MOL's strategic decision regarding the method of operation of fuel stations in Slovenia] under the MOL brand, as listed in **Annex A.1**. The sale of the MOL Divestment Business will be carried out as an asset deal. The Fuel Stations to be divested as the MOL Divestment Business do not have a separate legal capacity, nor form separate organisational units within MOL Slovenija. Therefore, in respect of each Fuel Station, only the Assets belonging to such Fuel Station and necessary for its operation are divested. The Assets to be divested are the Business Assets, which include the (a) Hydrocarbon Inventory; (b) the Non-fuel Inventory; (c) the Business Properties; (d) Fixed Plant; (e) Loose Plant and Equipment; (f) Business Leases; (g) Business Information; and (h) Business Records, but exclude the Excluded Business Assets. The list of all Assets being divested in respect of each MOL Fuel Station are listed in **Part 1 of Annex A.2** of the present Schedule A. [details on the asset list defining the scope of the Remedy Transaction].
- 2 For the avoidance of doubt,
 - a. tobacco sales licences cannot be transferred under Slovene law and will therefore need to be re-acquired by the Purchaser;
 - b. [details on the scope of the Remedy Transaction];
 - c. [details on the scope of the Remedy Transaction];
 - d. the Divestment Business includes the benefit for the Purchaser, which however does not have to be used by the Purchaser, to conclude with MOL Slovenija or another designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the respective Fuel Stations of the Divestment Business, [details on the duration and the conditions of MOL's temporary supply agreement offered to the Purchaser];
 - e. [details on MOL's and Purchaser's contractual obligations under the Remedy SPA regarding de-branding];
 - f. upon Purchaser's request, Purchaser will be provided with copies of such (relevant parts of) documents that do not relate exclusively to the Fuel Stations but that contain relevant information on and are necessary for the operation of the Fuel Stations.
- 3 As regards [information about MOL's contractual arrangements with third parties and the transfer of fuel station 0408].

Annex A.1

List of all assets being divested in respect of each Fuel Station of the MOL Divestment Business

1. The MOL Divestment Business consists of the following Fuel Stations:

Id.	Network and brand under which the Fuel Station is currently operating	Address	Latitude	Longitude
0301	MOL	Tržišče 12B, 3250 Rogaška Slatina	46.231268	15.65614
0302	MOL	Kidričeva Ulica 40, 3000 Celje	46.233943	15.296236
0303	MOL	Ljubljanska Cesta 10B, 1270 Litija	46.057171	14.822804
0310	MOL	Lendavska Ulica 75, 9000 Murska Sobota	46.667665	16.176776
0321	MOL	Bazoviška Cesta 18, 6240 Kozina	45.609097	13.933605
0324	MOL	Mirnopeška Cesta 4, 8000 Novo Mesto	45.8212	15.150467
0325	MOL	Partizanska Cesta 69B, 6210 Sežana	45.705145	13.861011
0328	MOL	Mariborska 128, 3000 Celje	46.243638	15.278193
0329	MOL	Liptovska Cesta 32B, 3210 Slovenske Konjice	46.339759	15.419622
0332	MOL	Bakovska 31A, 9000 Murska Sobota	46.645381	16.167905
0333	MOL	Reška Cesta 25A, 1330 Kočevje	45.634267	14.865935
0336	MOL	Reška Cesta 18B, 6258 Prestranek	45.728083	14.187838
0337	MOL	Kolodvorska Ulica 2A, 9240 Ljutomer	46.526689	16.193359
0400	MOL	Ptujska Cesta 135, 2204 Miklavž Na Dravskem Polju	46.49671	15.713517
0401	MOL	Velika Vas Pri Krškem 69, 8273 Leskovec Pri Krškem	45.920135	15.473791
0402	MOL	Celjska Cesta 55, 3240 Šmarje Pri Jelšah	46.228847	15.504162
0403	MOL	Arclin 101, 3211 Škofja Vas	46.278648	15.300236

Id.	Network and brand under which the Fuel Station is currently operating	Address	Latitude	Longitude
0405	MOL	Vodenska Cesta 28 A, 1420 Trbovlje	46.150356	15.045313
0407	MOL	Senožeti 93, 1262 Dol Pri Ljubljani	46.088712	14.716799
0408*	MOL	Letališka Cesta 24, 1000 Ljubljana	46.06163	14.564546

* Note paragraph 3 of Schedule A.

- The Fuel Stations forming part of the MOL Divestment Business consist of the assets listed for each Fuel Station in **Annex A.2**. [Details on the asset list defining the scope of the Remedy Transaction details on the asset list defining the scope of the Remedy Transaction].

SCHEDULE B

OMV Divestment Business

- 1 The OMV Divestment Business comprises of 18 fuel stations [details on the Target's strategic decision regarding the method of operation of fuel stations in Slovenia], and one fuel station [details on the Target's strategic decision regarding the method of operation of fuel stations in Slovenia]. All operate under the OMV brand. The fuel stations of the OMV Divestment Business are listed in **Annex B.1**. The sale of the OMV Divestment Business will be carried out as an asset deal. The Fuel Stations to be divested as the OMV Divestment Business do not have a separate legal capacity, nor form separate organisational units within OMV Slovenija. Therefore, in respect of each Fuel Station, only the Assets belonging to such Fuel Station and necessary for its operation are divested. The Assets to be divested are the Business Assets, which include the (a) Hydrocarbon Inventory; (b) the Non-fuel Inventory; (c) the Business Properties; (d) Fixed Plant; (e) Loose Plant and Equipment; (f) Business Leases; (g) Business Information; and (h) Business Records, but exclude the Excluded Business Assets. The list of all Assets being divested in respect of each OMV Fuel Station are listed in **Part 1 of Annex B.2** to the present Schedule B. [Details on the asset list defining the scope of the Remedy Transaction].
- 2 For the avoidance of doubt:
 - a. tobacco sales licences cannot be transferred under Slovene law and will therefore need to be re-acquired by the Purchaser;
 - b. [details on the scope of the Remedy Transaction];
 - c. the Divestment Business includes the benefit for the Purchaser, which however does not have to be used by the Purchaser, to conclude with MOL Slovenija or another designated MOL Group entity a logistics and supply agreement regarding the supply of motor fuels and their delivery to the respective Fuel Stations of the Divestment Business, [details on the duration and the conditions of MOL's temporary supply agreement offered to the Purchaser];
 - d. [details on MOL's contractual obligations under the Remedy SPA regarding de-branding];
 - e. upon Purchaser's request, Purchaser will be provided with copies of such (relevant parts of) documents that do not relate exclusively to the Fuel Stations but that contain relevant information on and are necessary for the operation of the Fuel Stations.
- 3 [Details on the implementation of the divestment of O3534 Tepanje fuel station].

Annex B.1

List of all assets being divested in respect of each Fuel Station of the OMV Divestment Business

1. The OMV Divestment Business consists of the following Fuel Stations:

Id.	Network and brand under which the Fuel Station is currently operating	Address	Latitude	Longitude
O3418	OMV	Gornje Ložine 1A, 1332 Stara Cerkev	45.689289	14.7997
O3420	OMV	Istrska cesta 53, 6000 Koper	45.538903	13.728619
O3435	OMV	Ptujska Cesta 104, 2000 Maribor	46.53485	15.66165
O3436	OMV	Tržaška C. 565, 1351 Brezovica Pri Ljubljani	46.022535	14.407636
O3450	OMV	Dečkova C. 39, 3000 Celje	46.24062	15.25644
O3465	OMV	Ptujska Cesta 225, 2000 Maribor	46.522349	15.679883
O3473	OMV	Stojnci 24, 2281 Markovci	46.380448	15.972496
O3474	OMV	Bukovec 1B, 2314 Zgornja Polskava	46.43075	15.62705
O3475	OMV	Tržaška C. 83, 2000 Maribor	46.51809	15.65131
O3476	OMV	Lokev 1A, 6219 Lokev	45.66133	13.91942
O3479	OMV	Tržaška C. 60B, 6230 Postojna	45.772642	14.200028
O3482	OMV	Potok Pri Komendi 8, 1218 Komenda	46.205702	14.52399
O3487	OMV	Radgonska C. 15, 2234 Benedikt	46.61068	15.89416
O3488	OMV	C. med vinogradi 52, 6000 Koper	45.555358	13.78105
O3502	OMV	Loke 40, 5000 Nova Gorica	45.95337	13.69157
O3505	OMV	Gederovci 17A, 9251 Tišina	46.67921	16.056079
O3511	OMV	Vinjole 29B, 6320 Portorož	45.50069	13.61044

Id.	Network and brand under which the Fuel Station is currently operating	Address	Latitude	Longitude
O3526	OMV	Prešernova 2A, 6310 Izola	45.537905	13.668631
O3534*	OMV	Tepanje 4b, 3210 Slovenske Konjice	46.340828	15.469587

* Note paragraph 3 of Schedule B

2. The Fuel Stations forming part of the OMV Divestment Business consist of the assets listed for each Fuel Station in **Annex B.2.** [Details on the asset list defining the scope of the Remedy Transaction].