EN

Case No COMP/M.5346 - APMM / BROSTRÖM

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Madam,

Subject: **Case No COMP/M.5346 – APMM/ Broström**
Notification of 2.12.2008 pursuant to Article 4 of Council Regulation (EC) No. 139/2004[1]

1. On 2 December 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 ('Merger Regulation') by which A.P. Møller-Mærsk, ('APMM', Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of Broström (Sweden), by way of purchase of shares.

I. THE PARTIES

2. The **APMM** group is an international conglomerate based and listed in Copenhagen. Although it is mainly known for its shipping business (Maersk Line and Maersk Tankers), the APMM group has a wide range of activities, including container terminal services, inland transportation, logistics, harbour towage, oil and gas exploration and production, and retail. APMM is active in 130 countries around the world.

3. **Broström**, which is based in Gothenburg, Sweden, and listed on the Stockholm stock exchange, provides maritime transportation services by product tankers. Broström's customers consist primarily of oil companies. Other significant customer groups include brokers of oil cargoes and industrial users of oil products. Broström's activities also include maritime logistics (e.g. combined transport and storage solutions) and ownership, technical operation and crewing for most of its vessels.

1 OJ L 24, 29.1.2004 p. 1

II. THE PROPOSED OPERATION AND THE CONCENTRATION

4. APMM, via its subsidiary Maersk Tankers, launched an offer for Broström shares on 27 August 2008. On the same day, Broström's board unanimously recommended the offer. This offer expires on 16 January 2009.

5. Through the offer, the APMM intends to acquire sole control of the whole of Broström. The proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION AND ARTICLE 4(5) REFERRAL

6. The notified transaction does not reach the turnover thresholds set out in Article 1 of the Merger Regulation. However, by way of a reasoned submission of 16 October 2008, the parties informed the Commission that the concentration is capable of being reviewed under the national competition laws of at least three Member States, namely Bulgaria, Cyprus, Estonia, Germany, Greece, Latvia, Slovakia, and the UK, as well as one EEA state, namely Norway.

7. None of the EU/EEA Member States concerned expressed a disagreement with the case being referred to the Commission within the 15 working day period set out in Article 4(5) of the Merger Regulation. The notified operation therefore is deemed to have a Community dimension pursuant to Article 4(5) of the Merger Regulation, and the Commission has sole competence to take a decision by virtue of Article 57(2)(a) of the EEA Agreement.

IV. RELEVANT MARKETS

8. The concentration concerns the tramp shipping sector, notably the transport of liquid bulk products in tankers between 10,000 and 60,000 DWTs.[2]

A. Market overview

9. The tramp shipping sector relates generally to the transport of a single commodity which fills a single ship. Unlike in the liner sector, tramp shipping markets are unscheduled, in the sense that vessels do not sail on advertised, pre-determined routes on particular days. When they are not laden, idle/empty tramp vessels bid for business in their area or move to a loadport in order to pick up cargo or move to a more promising area ("repositioning" or "ballasting")[3].

10. Tanker owners may operate their vessels themselves or charter them out on long term time charters to tanker operators. Tanker operators also enter into "commercial management" agreements with each other, whereby one operator is in charge of managing another operator's vessel for a fee. Tanker operators often manage a mix of owned vessels, time chartered vessels and vessels under commercial management. Customers in this business are mainly oil companies and chemical companies. Some competitors are also customers, for example when a tanker operator charters in transport

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[2] DWT stands for "deadweight tons". DWTs are a measure of a ship's transport capacity. Cubic metres ("cbm") are also sometimes used to express capacity. This decision uses DWT figures.

[3] The notifying party estimates that vessels in the relevant DWT range spend approximately 30-40 % of their time on ballast voyages.

capacity from another operator in order to face increased demand. Conversely, some customers in this business are also competitors.[4]

B. Relevant product markets

11. According to the Maritime Guidelines,[5] the elements to be taken into account in the market definition in the tramp sector include vessel types, cargo types, vessel sizes, and contract types. These factors are assessed in turn below.

i. Vessel types

12. The notifying party submits that the relevant product market includes only liquid bulk tankers.

13. There are many different vessel types in the shipping sector. For example, container ships are designed for containers, dry bulk vessels are designed for iron ore, coal, grain, etc. By contrast, liquid bulk vessels – which include "product tankers" and "chemical tankers" – have tanks, pumps and loading/unloading equipment designed for dirty and clean petroleum products,[6] chemicals and vegetable oils ('vegoils'). Liquid bulk vessels are the only vessels that are technically capable of carrying such liquids. Therefore, for the purpose of this case, the relevant product market is limited to liquid bulk vessels.[7]

14. Furthermore, the double-hull requirement under Regulation no. 417/2002[8] is taken into account when defining the vessel type to be included in the relevant market (Maritime Guidelines, paragraph 30). Indeed, tankers entering EU waters must comply with Regulation no. 417/2002. Therefore, in accordance with that regulation, only vessels meeting the double-hull requirement and non-double-hull vessels delivered after 1982 are taken into account for present purposes.[9]

ii. Types of cargo

15. APMM and Broström transport "clean" and "dirty" petroleum products as well as small amounts of chemicals and vegoils. The notifying party submits that transport services in relation to dirty products and clean products belong to the same relevant market. The notifying party further submits that chemicals and vegoils are essentially clean products

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4 For example, several oil companies operate their own vessels and also buy transport capacity from tanker operators.

5 Guidelines on the application of Article 81 EC to maritime transport services, OJ C 245, 26.9.2008, p. 2.

6 "Clean" petroleum products refer to oil products that do not stain the surfaces in contact with them, e.g. jet fuel and gasoline. "Dirty" petroleum products refer to crude oils and residual fuels such as heavy fuel oils.

7 Moreover, segmentation by other factors such as tank coating, ice classification and the presence of heating equipment or nitrogen generators can be left open as the concentration would not give rise to competitive concerns under any alternative market definition.

8 Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94, OJ L 64, 7.3.2002, p. 1.

9 According to the parties, this excludes approximately 26 % of the worldwide fleet in the relevant DWT range.

and should therefore also be included in the relevant market. These two points are assessed in turn below.

"Dirty" and "clean" petroleum products

16. The market investigation has shown that there are different degrees of cleanliness: switching from a dirty product to a slightly cleaner product may involve some cleaning; while switching from a dirty product to a very clean product may require not only a cleaning but also a history of carrying up to three clean cargoes before the vessel can carry a very clean product (e.g. jet fuel).

17. Some respondents point out elements indicating that clean products and dirty products may not belong to the same relevant market. In particular, the cost of a cleaning (including the opportunity cost of not being able to use the vessel, unless the cleaning takes place during a ballast voyage) is significant when compared to the price of a typical voyage.[10]

18. Furthermore, a tanker operator's decision to clean a vessel in response to a customer's request for proposals depends on a number of factors, namely (i) whether the "clean" market is expected to be more advantageous than the dirty market for a significant period in the future; (ii) whether the operator can clean the vessel to the degree of cleanliness required by the customer; and (iii) whether the cleaning can take place before the loading date required by the customer.

19. Moreover, figures provided by the notifying party show that vessels rarely switch from the "dirty" trade to the "clean" trade or vice versa. Out of 4,600 liftings in 2007, the parties' vessels switched 22 times from "dirty" to "clean" and 26 times from "clean" to "dirty". Information from the market investigation on other operators' vessels is in line with these findings.

20. However, when asked whether vessels transporting clean products are substitutable with vessels transporting dirty products, the majority of respondents consider that they are indeed substitutable. They also note that a significant amount of shipments are loaded on vessels that were just cleaned in order to able to carry the cargo.

21. In any event, it can be left open for the purpose of the present decision whether the market for transporting petroleum products should be further segmented by type of petroleum product (clean or dirty), as the proposed concentration does not raise any competition concerns under any alternative market definition.

Chemicals and vegoils

22. There are both "chemical tankers" and "product tankers" in the 10-60,000 DWT range.[11] Chemical tankers can carry all clean and dirty petroleum products as well as

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[10] According to the notifying party, a cleaning takes three to seven days and costs approximately 15,000 to 30,000 USD per vessel in addition to the value of the vessel's idle time, if applicable. Respondents to the market investigation provided larger ranges of figures (1 to 10 days and 5,000 to 100,000 USD). This is to be compared to a typical voyage of one to ten days at a daily time charter equivalent rate of 12,000-38,000 USD per vessel, depending on the size and route, according to the notifying party and Baltic Exchange figures.

[11] Fearnleys, "Legal and Economic Analysis of Tramp Maritime Services", February 2007 (hereafter "the Fearnleys report"); Clarkson, "The Tramp Shipping Market", April 2004 (hereafter "the Clarkson report").

chemicals and vegoils, although in practice chemical tankers specialising in dangerous chemicals do not carry significant volumes of petroleum products.[12] Modern product tankers can carry all types of chemicals and vegoils, except dangerous chemicals, which can only be transported in the corresponding specialised chemical tankers.

23. The market investigation indicates that maritime transport services in relation to dangerous chemicals do not belong to the same relevant market as maritime transport of clean products (or clean and dirty products). Only high-end chemical tankers can transport dangerous chemicals. Because of IMO[13] requirements (IMO classification, tank types, crew training), product tankers are not active in the dangerous chemicals market. Conversely, dangerous chemical tankers are usually not active in the petroleum products market.

24. In any event, it can be left open for the purpose of the present transaction whether the dangerous chemicals market is separate, as there are no competition concerns on any possible market definition.[14]

25. By contrast, the market investigation shows that there is a significant degree of substitutability between the petroleum products market and the "easy" chemicals market (or "easychems", as opposed to "dangerous" chemicals; easychems include vegoils). Specifically, several brokers and operators report that high-end product tankers are also active in the easychems segment, while low-end chemical tankers are also active in the clean products segment.[15] The fleet of chemical tankers and product tankers that are able to operate in both segments is known as the "swing fleet". In the present case, the swing fleet is sufficient to exercise a competitive constraint on both segments and bring them within a single relevant market.

Conclusion on types of cargo

26. Therefore the following two alternative market definitions will be examined in the competitive assessment: (a) dirty petroleum products on one side and clean petroleum products and easychems on the other side; and (b) dirty petroleum products, clean petroleum products and easychems within one and the same relevant market.

iii. Vessel sizes

27. Broström operates some vessels under 10,000 DWTs, but APMM does not. APMM operates some vessels above 60,000 DWTs, but Broström does not. Consequently, there are no overlaps outside the 10,000-60,000 DWT range.[16]

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[12] For the purpose of the present decision, as mentioned notably in the Fearnleys and Clarkson reports, dangerous chemicals – or "core" chemicals – are defined as IMO 1 chemicals and stainless steel grade chemicals. Similarly, chemical tankers specialising in dangerous chemicals are IMO 1 tankers and tankers that have mainly stainless steel tanks.

[13] International Maritime Organization.

[14] Neither Broström nor APMM is active on this dangerous chemical transport market.

[15] Fearnleys report, pages 191 and 196; Clarkson report, page 45.

[16] There is no competitive concern for an overall market encompassing all vessels without size considerations.

28. The notifying party submits that (a) vessels below 10,000 DWTs are not substitutable with vessels above 10,000 DWTs; (b) all vessels within the 10,000-60,000 DWT range are substitutable because of a chain of substitution between them; and (c) vessels above 60,000 DWTs are not substitutable with vessels under 60,000 DWTs. Notably, vessels under 10,000 DWTs and over 60,000 DWTs would have to be distinguished at the level of product market definition from vessels within the 10,000-60,000 DWT range due to different characteristics and uses. In this regard, the notifying party refers in particular to draught restrictions, just-in-time small shipments versus large shipments that require storage facilities, and different levels of ability to sail in adverse weather.

29. The market investigation in the present case indicates indeed that smaller ships tend to be more flexible, as they can reach ports where there is low demand and ports with draught restrictions, and they allow customers to send small, regular shipments for just-in-time delivery, while large shipments require storage facilities. It also appears that larger vessels are more fuel-efficient and cost-efficient (in terms of the cost of transport per ton of product, as loading one large cargo produces economies of scale). Finally, smaller ships tend to focus on coastal/short-range trade, while larger ships tend to sail on long-haul routes. Moreover, most respondents to the market investigation consider that the 10,000 DWT limit is a generally accepted segmentation in the industry. This finding is also in line with industry reports.[17]

30. Therefore vessels of less than 10,000 DWTs belong to a separate relevant market from vessels within the 10,000-60,000 DWT range.

31. By contrast, less clear-cut evidence has been received in the course of the market investigation as to the existence of a possible upper limit at 60,000 DWTs for the purpose of defining the relevant product market in the present case. This question can however be left open, as no competition concerns arise under any plausible market definition.

32. As regards the possibility of further subdivisions within the 10,000-60,000 DWT range, the market investigation indicates that there is a certain degree of substitution between different vessel size categories, as customers are able to switch their cargoes from one vessel size category to another for reasons of price. However, as the possibility of further segmentation within the 10,000-60,000 DWT range – i.e. between 10,000-25,000 and 25,000-60,000 DWT vessels – is closely related to the geographic market definition, this possible chain of substitution between different vessel sizes is examined in the section dealing with the geographic market definition.

iv. Contract types

33. There are mainly four contract types in the tanker business: voyage charters (VCs), time charters (TCs), contracts of affreightment (COAs), and consecutive voyage charters (CVs). VCs are also known as the "spot" market. TCs, COAs and CVs are also known as "contract" shipping. The notifying party claims that all contract types are substitutable.

[17] The Clarkson report, the Fearnleys report and Broström's annual reports and investor presentations all categorise product tankers as ranging from 10,000 to 60,000 DWTs, although some of them divide them further (e.g. 10,000-25,000 v. 25,000-60,000 DWTs). The AFRA scale divides product tankers in three categories: 10-25,000 DWTs, 25-45,000 DWTs and 45-80,000 DWTs.

34. The market investigation and industry reports revealed that all these contract types are substitutable, in particular since spot rates and contract rates interact,[18] and customers monitor rates under different contract types and shift their business accordingly. In other words, there is constant demand substitution between the different contract types.[19] Furthermore, there are no vessel availability issues when shifting business from one contract type to another. There are several operators in the market that have sufficient scale to offer COAs, and vessels are available on the spot market within a few days. The parties consider that approximately 20 to 40% of vessels in the 10,000-60,000 DWT range and currently in European waters are available on three days' notice. Finally, the majority of respondents to the market investigation uses at least three of the four possible contract types.

35. There is therefore no need to subdivide the relevant markets by contract type.[20]

C. Relevant geographic markets

36. The notifying party submits that the geographic scope of the market is worldwide, as tanker operators can and do easily redeploy their vessels around the globe. The notifying party's analysis is partly based on allegedly high correlation rates between spot prices on routes in different regions. Alternatively, the notifying party proposes a distinction between tankers trading "West of Suez" (Atlantic Basin and Mediterranean Sea) and tankers trading "East of Suez" (Arabian Gulf, Indian Ocean, Asia and Pacific).

37. The results of the market investigation show that there are mixed views about the exact geographic scope of the markets at issue. When asked whether operators would move some vessels to a neighbouring region in the event of a 5-10 % increase in price there, around a quarter of the respondents replied "no", another quarter replied "yes" and around half replied "only on certain conditions".[21]

38. Indeed, data submitted by the notifying party indicate that smaller ships tend to focus on coastal/short-range trade, while larger ships tend to go long-range. Specifically, in 2007 and 2008, the parties' vessels of less than 22,000 DWTs traded short-range (i.e., within a particular region; for example within Europe, within Asia, etc.) in a proportion of approximately nine out of ten. By contrast, their bigger vessels sail both within a single region and between different regions, though rarely between one side of the Suez canal and the other side. According to the market investigation, most market operators put the

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18 Fearnleys report, page 187 (COAs are "usually based on a market related freight rate").

19 If the spot market is expected to rise, customers will want to lock in contracts at a fairly low rate before the increase in the spot market. But if a customer is locked in a contract at a particular rate and the spot rate goes below the contract rate, he/she will want to renew the contract at a lower rate or even get out of the contract entirely at the next opportunity.

20 Moreover, it would be very difficult to establish market shares by contract type because of (a) the large number of operators and liftings per contract type per year, (b) constant switching from one contract type to another; and (c) the fact that the same vessel can carry spot cargo and contract cargo at the same time.

21 E.g., only the larger vessels would move, only if the medium-term view in the neighbouring region is favourable and sufficient to compensate for repositioning costs, only if the price increase in the new region is expected to remain sufficiently high long enough to compensate for the risk of moving, only if the operator knows the new area, only if the operator accepts the new geographic exposure mix, only if the operator does not have commitments or a loyal customer base in the original region, and only if weather conditions, bunker costs, dry-docking facilities and port efficiency are sufficiently attractive in the new region.

dividing line between short-range vessels and long-range vessels somewhere around 25,000 DWTs.

39. In any event, the exact geographic market definition can be left open in the present case, as there are no competition concerns on any possible market definition.

40. Therefore, the relevant geographic market may be worldwide or based on the distinction between the area lying "west of Suez" and the area lying "east of Suez", which is widely used in the industry, or on further geographic subdivisions ("Europe", defined as the European Atlantic Coast from Russia to Gibraltar, the Mediterranean Sea and the Black Sea; or the "European Atlantic Coast" on one side and the "Mediterranean Sea/Black Sea" on the other side).

D. Conclusion on the relevant markets

41. In conclusion, the present transaction has to be assessed on the basis of several possible market definitions, namely the dirty petroleum products market; clean products, including easychems; and dirty and clean petroleum products as well as easychems; for (a) the worldwide market, (b) the area West of Suez, (c) Europe, (d) the European Atlantic Coast (EAC) and (e) the Mediterranean Sea/Black Sea area; and broken down by DWT range ((i) 10,000-60,000 DWTs; (ii) 10,000-25,000 DWTs and (iii) 25,000-60,000 DWTs).

V. COMPETITIVE ASSESSMENT

42. There are several horizontally affected markets in the 10,000-60,000 DWT range. There are no vertically affected markets or conglomerate issues.

A. Conceptual framework of the analysis

i. Market shares expressed in number of vessels

43. In previous merger decisions in the liner sector,[22] the Commission assessed the competitive situation on the basis of TEU capacity[23] (and not on the basis of actual liftings or number of vessels). By contrast, no Commission precedent exists in the tramp sector.

44. In the present case, the notifying party was unable to provide sufficiently precise figures on the basis of DWT capacity or actual liftings but provided market data in terms of vessel numbers.[24]

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[22] Case COMP/M.3829 – Maersk/PONL, case COMP/M.3863 – TUI/CP Ships, and case COMP/M.3973 – CMA CGM/Delmas.

[23] TEU refers to "twenty-foot equivalent units".

[24] The number of APMM and Broström vessels exclude vessels that are long term time chartered to third parties, as the parties have no operational control over those vessels. Moreover, according to the Maritime Guidelines (para. 29), "[i]n certain tramp shipping markets, consideration must be given to whether vessels can be considered as captive capacity and should not be taken into account when assessing the relevant market on a case by case basis." However, in the present case, it is not necessary to examine this issue further because this concentration does not raise competition concerns even in the worst case scenario, i.e., if the captive fleet is excluded from the relevant market.

45. This method can be regarded as sufficiently accurate because (a) APMM and Broström's vessels are distributed along the range from 10,000 to 60,000 DWTs; (b) vessels are often not loaded to 100 % capacity, and vessels that have different DWT capacities compete with each other to some extent; and (c) in bidding markets, vessel numbers matter more than actual liftings. In the present case, the competitive situation is therefore assessed on the basis of the number of vessels.

ii. Treatment of pools

46. The Maersk Tankers division of the APMM group is active in the 10,000-60,000 DWT tanker sector through two brands: Swift Tankers and Handytankers. Swift Tankers is now entirely controlled by APMM.[25] Handytankers is a pool.

47. Pools are essentially joint selling or joint production agreements whereby shipowners agree to bring their vessels together under a single commercial manager, which is usually one of the pool members.[26]

48. The Handytankers pool brings together product tankers in the 30,000-40,000 DWT range belonging to five shipowners including APMM. APMM also acts as pool manager, which means that it sets the prices for all vessels in the pool.[27] APMM is therefore both a pool member and in charge of the joint selling. On this basis, the notifying party proposes that all Handytankers vessels should be aggregated to APMM's fleet, and, therefore, market share.

49. In view of the fact that the members of the Handytankers pool effectively present themselves on the market as one company and engage in joint selling through APMM, for the purpose of the present case, all Handytankers vessels are aggregated with APMM's fleet in the competitive analysis below.

B. Horizontal issues

50. As indicated above, the parties' activities overlap in the 10-60,000 DWT range. Based on the alternative market definitions outlined above, the parties estimate their current combined market shares are as follows.

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[25] See Commission decision of 11 November 2008 in case M.5233 – APMM/Swift.

[26] See Maritime Guidelines, para. 61.

[27] Clause 6.1 of the Handytankers pool agreement of 14 July 1999.

DWT range	DIRTY PETROLEUM PRODUCTS				
	Worldwide	West of Suez	Europe (EAC and Mediterra-nean and Black Sea)	EAC	Mediterra-nean and Black Sea
10-60K	[10-20] %	[10-20] %	[20-30] %	[20-30] %	[10-20] %
10-25K	[10-20] %	[15-25] %	[25-35] %	[25-35] %	[0-10] %
25-60K	[0-10] %	[10-20] %	[10-20] %	[10-20] %	[20-30] %

DWT range	CLEAN PETROLEUM PRODUCTS + EASY CHEMICALS				
	Worldwide	West of Suez	Europe (EAC and Mediterra-nean and Black Sea)	EAC	Mediterra-nean and Black Sea
10-60K	[0-10] %	[5-15] %	[10-20] %	[10-20] %	[0-10] %
10-25K	[0-10] %	[10-20] %	[10-20] %	[20-30] %	[0-10] %
25-60K	[0-10] %	[10-20] %	[10-20] %	[10-20] %	[25-35] %

DWT range	DIRTY PETROLEUM PRODUCTS + CLEAN PETROLEUM PRODUCTS + EASY CHEMICALS				
	Worldwide	West of Suez	Europe (EAC and Mediterra-nean and Black Sea)	EAC	Mediterra-nean and Black Sea
10-60K	[0-10] %	[10-20] %	[10-20] %	[10-20] %	[10-20] %
10-25K	[0-10] %	[10-20] %	[10-20] %	[20-30] %	[0-10] %
25-60K	[0-10] %	[10-20] %	[10-20] %	[10-20] %	[25-35] %

51. As illustrated by the tables above, the transaction gives rise to 20 potentially affected markets. Only on four affected markets listed in the table below, the combined market share would equal or exceed the 25 % threshold laid down in paragraph 18 of the Horizontal Merger Guidelines[28] and would remain in any event at a maximum of [25-35] %.

[28] OJ C 31, 5.2.2004, p. 5.

Relevant markets where the 25 % threshold is met	APMM's market share	Broström's market share	Merging parties' combined market share	Largest competitor
Dirty products, Europe, 10,000-25,000 DWTs	[10-20] %	[10-20] %	[25-35] %	Eitzen/City Class Pool
Dirty products, European Atlantic Coast, 10,000-25,000 DWTs	[10-20] %	[10-20] %	[25-35] %	Eitzen/City Class Pool
Clean products and easy chemicals, Mediterranean and Black Sea, 25,000-60,000 DWTs	[15-25] %	[0-10] %	[25-35] %	ST Shipping
Dirty and clean products and easy chemicals, Mediterranean and Black Sea, 25,000-60,000 DWTs	[15-25] %	[0-10] %	[25-35] %	ST Shipping

Source: notifying party.

52. The competitive assessment hereunder focuses on these four markets as competition concerns are unlikely to exist on all other affected markets in view of the parties' relatively low market shares on those markets.

53. On these four markets, APMM and Broström will strengthen their leading position, with the merged entity's largest competitor having less than 8 % market share. However, for the reasons detailed below and since no significant concerns have been raised by market participants in the course of the market investigation, it is considered that the operation does not significantly impede effective competition on any of the four above-mentioned markets.

54. First, the relevant markets can be characterised as bidding markets with a relatively fragmented supply side. As confirmed by the market investigation, charterers often contact several brokers and have a choice between several vessels. Moreover, the markets at issue are not capacity constrained; on the contrary, many respondents to the market investigation expect a certain degree of overcapacity in the market in the future as a result of the current orderbook of vessels and lower demand for oil products. Moreover, output levels cannot easily be scaled back in the relevant markets, as vessels have a long lifespan and the market is fragmented. By contrast, the demand side is relatively concentrated, with large oil traders, oil majors, chemical companies and food producers making up the bulk of the demand. The expected overcapacity is expected to further improve the bargaining power of these customers.

55. Secondly, several companies have recently entered the market and one more company is expected to enter the market, according to the notifying party. APMM also claims that new entry is possible with one or two vessels. The market investigation indicates that one vessel is enough to enter the VC and TC segments, but that a new entrant would need six or seven vessels to become a credible COA operator. In practice, recent entrants have entered the market with six to eight vessels. The market investigation also shows that customers regularly multisource and switch suppliers.

56. Although some respondents to the market investigation cite vessel financing, quality crewing and vetting approvals as possible entry barriers, these barriers apply equally to established firms and newcomers. Moreover, capital costs to enter the market or to operate more vessels are not very high – it is possible to charter in a vessel from a non-operating owner. It is also possible to buy a second-hand vessel. Accordingly, the Fearnleys report explains that "the tanker market has very low barriers to entry. […] The second hand market for both dirty and clean tankers is highly liquid, and there are a number of transactions taking place every year".[29]

57. Moreover, it is not difficult for a new entrant or an established player to build scale in this market by chartering in some tonnage, buying new or second-hand vessels, or forming/joining pools that are in compliance with Article 81 EC. Thus the merged entity does not enjoy a unique competitive advantage due to its size. It should also be borne in mind that scale allows for better fleet deployment and better fleet utilisation, to the benefit of operators, customers and the environment.

58. Thirdly, while APMM and Broström compete on the market, the market investigation clearly indicates that they are not each other's closest competitors. Indeed, only a small minority of respondents cited Broström as APMM's closest competitor. The tanker operators that are most often cited as APMM's closest competitor by respondents to the market investigation are ST Shipping, Eitzen (City Class pool), Norient, Torm (MR pool), Heidmar (Dorado and Marida pools), OSG, Neste, Clipper Wonsild and James Fischer. The fact that APMM and Broström are not each other's closest competitors is further evidenced by differences in their focus on certain contract types and cargo areas. Indeed, APMM focuses more on […] while Broström focuses more on […].

59. Finally, as the merger would in all likelihood not cause a significant reduction in the number of vessels in the relevant markets, and since charterers often have a choice of several vessels in addition to the parties' vessels (according to the market investigation, customers regularly multisource and switch suppliers), it would be very difficult for the merged entity to raise prices. Even if the merged entity attempted to raise prices in a particular region, vessels could move in from another region. While vessels may not be ready to move to a neighbouring region in the event of a small increase in price, they would be more inclined to move to a neighbouring region in the event of a larger price increase and compete away the profits (see para. 37 above). Further competitive constraints result from the fact that clean and dirty petroleum vessels as well as different vessel sizes are at least to a certain extent substitutable to each other (see paras. 20 and 32 above).

[29] Page 187.

VI. CONCLUSION

60. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Siim Kallas
Vice-President of the Commission