

***Case No COMP/M.6807 -
MERCURIA ENERGY
ASSET MANAGEMENT /
SINOMART KTS
DEVELOPMENT /
VESTA TERMINALS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/03/2013

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.6807 - MERCURIA ENERGY ASSET MANAGEMENT / SINOMART KTS DEVELOPM

ENT / VESTA TERMINALS

Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 31 January 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertakings Mercuria Energy Group Limited ("Mercuria", Cyprus) and China Petrochemical Corporation ("Sinopec", China) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Vesta Terminal B.V. ("Vesta", The Netherlands), by way of purchase of shares. Vesta is currently a wholly-owned subsidiary of Mercuria.

1. THE PARTIES

2. Mercuria's core activities are in the trading of energy products: crude oil, refined petroleum products, natural gas / LNG, power, coal, biodiesel, vegetable oils and carbon emissions.
3. Sinopec is a Chinese State-owned entity ("SOE"), mainly active in oil and gas exploration, development and production; domestic crude oil refining; marketing and distribution of refined oil products in China; domestic production and sale of petrochemical products and oil and domestic petrochemical engineering technical services.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has 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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

4. Vesta is active in the storage of petroleum products and biodiesel at terminals located at the three ports in Europe: Antwerp (Belgium), Flushing (The Netherlands) and Muuga (Estonia).

2. THE OPERATION AND THE CONCENTRATION

5. Following the proposed transaction, Sinomart KTS Development Limited ("Sinomart"), a wholly owned subsidiary of Sinopec Kantons Holdings Limited (an indirect subsidiary of Sinopec), will acquire 50% of the shares in Vesta, which is currently a wholly-owned subsidiary of Mercuria Energy Asset Management B.V. ("MEAM"), a wholly owned subsidiary of Mercuria.
6. The board of Vesta (the "Board") will comprise six members, three to be appointed by MEAM and three by Sinomart. The CEO and/or CFO, who will be management team members, could also be members of the Board. In this case, the CEO would be appointed by MEAM, while the CFO would be appointed by Sinomart. Sinomart will have the right to appoint the chairman of the Board, which will not have any additional, or tie-breaker vote or other special powers. The decisions of the Board are to be decided by simple majority, except with respect to the "Unanimous Board Reserved Matters"³, which are decided upon by unanimous vote of all Board Members. Decisions on certain, particularly important, matters ("Unanimous Investor Reserved Matters") will require a vote in favour by both MEAM and Sinomart, through the General Meeting of the two shareholders. These matters include, *inter alia*, any material change or alteration of the company's business, changes to, or the adoption of a new, budget or business plan and the appointment or removal of a Board member.
7. Therefore, as a result of the proposed transaction, MEAM and Sinomart will exercise joint control over Vesta.
8. A management team consisting of seven individuals will manage the operations of Vesta and be responsible for the day-to day running of its business, will be dedicated to the business operations of Vesta and will not hold management positions within either Mercuria or Sinopec. Under the Shareholders' Agreement, to the extent possible, each of Vesta's affiliate must be self-financing and obtain additional funds from third parties without recourse to MEAM and Sinomart. The two parents are not obliged to provide any contributions to the funding of any Vesta affiliate, unless they agree in writing on the amount, method and terms of such funding.
9. The agreed business plan principles require that any long-term commercial contracts to be signed between Vesta and the supporting trading entities of its two shareholders should be at arm's-length and on market-related terms and conditions. The same applies with regard to the two shareholders' future access to Vesta's storage capacity. The parties also submit that Vesta will be a joint venture for an indefinite period.
10. In light of the above, Vesta will be a full-function joint venture.

³ These decisions include *inter alia*: the approval of annual accounts; the appointment of auditors; loans or other forms of liability acceptance valued between [...] and [...]; and various other types of significant transactions.

11. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

12. The undertakings concerned had in 2011 a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Mercuria: EUR [...], Sinopec: EUR [...]). Each of them had an EU-wide turnover in excess of EUR 250 million (Mercuria: EUR [...], Sinopec EUR [...]), but they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Introduction

13. The proposed transaction will lead to a horizontal overlap between Mercuria and Sinopec⁵ in trading of crude oil and petroleum products, without however giving rise to an affected market⁶. There is also a vertical relationship between Vesta's storage activities in the EEA and the market for trading of crude oil and petroleum products by Mercuria and Sinopec, which, depending on the market definition, can give rise to affected markets⁷.

4.2. Relevant market definition

4.2.1. Product market definitions

4.2.1.1. Trading of crude oil and petroleum products

14. Both Mercuria and Sinopec are active in the trading of energy products. In the case of Mercuria, trading is its core business and it is active in trading a very wide range of energy products, from crude oil and refined petroleum products to biofuels and carbon emissions trading. In the EEA, Sinopec is active in the trading of crude oil. Sinopec also has relatively limited trading activity in refined petroleum products, which mostly occurs in China.

15. In relation to the trading of petroleum products and the inter-relationship between this activity and petroleum storage, trading may occur either before or after storage. Trades in crude oil tend to occur immediately after extraction and therefore before storage. Trading of refined petroleum products may occur before or after storage. However, not all products that are traded require storage.

16. In a previous decision⁸, the Commission indicated that a separate product market exists for the international trading of crude oil and refined petroleum products.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ The inclusion of the activities of the other Chinese SOEs does not change this conclusion.

⁶ As defined in the section 6 III (a) of the form CO.

⁷ As defined in the section 6 III (b) of the form CO.

⁸ See Commission decision in case COMP/M. 5629 *Normeston / MOL / Met JV*, paragraph 14.

17. The Parties agree with the Commission view.
18. For the purpose of the present decision there is no need to depart from the above product market definition.

4.2.1.2. Storage of petroleum products

19. In previous decisions, the Commission considered that there are separate markets for the storage of i) crude oil, ii) petroleum products, iii) vegetable oils and iv) chemicals and gas.⁹ Furthermore, the Commission has previously considered a distinction between "dirty" or "black" mineral oil products (such as crude oil and fuel oil) and "white" or "light" mineral oil products (such as gasoline, diesel and naphtha) based on the shipping of these goods in barges on inland waterways¹⁰. With respect to storage of petroleum, the Commission found that it was not appropriate to define separate markets for storage of petroleum products in tanks of different levels of sophistication¹¹.
20. The only area that is directly relevant to Vesta's storage activities is petroleum since this activity is vertically related to the trading activity of the parent companies.
21. Moreover, in a previous decision¹², the Commission distinguished between import facilities with a very large capacity of between 30 000 m³ to 50 000 m³ and smaller secondary/coastal distribution facilities. The Parties submit that Vesta's storage facilities – and those of its main competitors – are all larger than 30,000 cubic metres, thereby falling into the "very large capacity" category, referred to as "bulk" liquid storage.
22. Vesta submits that the storage of all petroleum products should be included in the same segment. However, in Vesta's view, it is also very possible to expand this category, in order to include crude oil and all types of biodiesel/biofuel. Storage providers (like Vesta and all of its major competitors) can and do change the usage of storage facilities between these different products depending on supply and demand. In this respect, there can be material commercial incentives to switch the usage of certain storage facilities, if market trends lead to an increase in demand for the storage of certain types of liquids over others.
23. Storage of petroleum products may fulfil both a logistic and strategic function. As a result, storage facilities must be as flexible as possible in being able to offer capacity for different types of products in line with supply and demand. These switches can and do occur on a regular basis. Moreover, while a switch from crude oil to refined petroleum products or biofuels does require a sanitisation process to be undertaken (whereby the storage tank is thoroughly cleaned), any switch from these products to crude oil does not require this process to be carried out.

⁹ See Commission decisions in cases COMP/M.6644 *APG/PGGM/Challenger LBC Terminals*, paragraph 10; COMP/M.6463 *Marquard & Bahls / Bominflot*, paragraph 10; COMP/M. 4532 *Lukoil /ConocoPhillips*, paragraph 14, IV/M.1621 – *Pakhoed / Van Ommeren (II)*, paragraph 8-11.

¹⁰ See Commission decision in case COMP/M.6463 *Marquard & Bahls / Bominflot*, paragraph 10.

¹¹ See Commission decision in case COMP/M.6644 *APG / PGGM / Challenger LBC Terminals*, paragraph 10.

¹² See Commission decision in case COMP/M.6525 - *SESA / DISA/ SAE/ JV*, paragraph 30.

24. For the purpose of the present decision the precise product market definition can be left open as the proposed transaction does not raise any competition concerns.

4.2.2. *Geographic market definitions*

4.2.2.1. Trading of crude oil and petroleum products

25. In a previous decision¹³, the Commission indicated that the product market for international trading of crude oil and refined petroleum products could be EEA-wide or worldwide in scope.

26. According to the Parties, this market is most certainly worldwide rather than EEA-wide. This is because all energy traders operate on a global basis and the orders placed for the sale and purchase of crude oil and refined petroleum products occur internationally and are not (and could not be) limited to a particular geographic region.

27. For the purpose of the present decision, the exact geographic market definition can be left open as the proposed transaction does not raise serious doubts at either EEA or worldwide level.

4.2.2.2. Storage of petroleum products

28. Previous Commission precedents¹⁴ have defined the relevant geographic market as covering the Antwerp-Rotterdam-Amsterdam region and hinterland (the "ARA"). The Parties agree with the Commission precedent.

29. With regard to the Baltic region, in *Lukoil / ConocoPhillips*¹⁵, the Commission left open the geographic scope of the storage market between national or regional (based upon Turku, Finland). Similarly, in *Pakhoed / Van Ommeren (II)*¹⁶, the Commission left open the question whether the storage market should be defined at national (Sweden) or port (Gothenburg) level.

30. According to the Parties, the ARA range precedent should also be used in order to determine the scope of the geographic market in the Baltic area and that this market should extend to the whole Baltic region. In particular, the Parties submit that Vesta competes most closely with a number of other storage facilities at ports in the Baltic States and in certain locations in Russia where petroleum products are also brought by rail. In addition, the competitive dynamics of the storage facilities in the ARA ports are a mirror image of those in the Baltic ports. This would be because the ARA ports are virtually exclusively used for the import of petroleum for use by various EU Member States, whereas the Baltic ports are virtually exclusively used for the export of petroleum from Russia to other continental markets.

31. For the purpose of the present decision, the exact geographic market definition can be left open as the proposed transaction does not raise serious doubts under any reasonable alternative market definition.

¹³ See Commission decision in case COMP/M. 5629 *Normeston / Mol / Met JV*, paragraph 15.

¹⁴ See Commission decision in cases COMP/M.6463 *Marquard & Bahls / Bominflot*, paragraph 17; COMP/M.4532 - *Lukoil / ConocoPhillips*, paragraph 19.

¹⁵ See Commission decision in case COMP/M.4532 - *Lukoil / ConocoPhillips*, paragraph 19.

¹⁶ See Commission decision in case COMP/M1621 *Pakhoed / Van Ommeren (II)*, paragraph 16.

4.3. Competitive assessment

4.3.1. Horizontal overlap: Trading of crude oil and petroleum products

32. The following table shows the Parties' and their main competitors' market shares at global and respectively EEA level in 2011:

Worldwide	Volume (Million Metric Tons)	Market Share by Volume (%)
Mercuria	[...]	[0-5%]
Sinopec	[...]	[0-5%]
CNPC/PetroChina	[...]	[0-5%]
CNOOC	[...]	[0-5%]
Sinochem	[...]	[0-5%]
Total Parties		[10-20%]
Vitol	[...]	[5-10%]
Trafigura	[...]	[0-5%]
Glencore Int. Plc	[...]	[0-5%]
Gunvor	[...]	[0-5%]
Lukoil	[...]	[0-5%]
Total	[...]	[0-5%]
Shell	[...]	[5-10%]
BP	[...]	[5-10%]
Total	[...]	100.0

Source: the Notifying Party

EEA	Volume (Million Metric Tons)	Market Share by Volume (%)
Mercuria	[...]	[0-5%]
Sinopec	[...]	[0-5%]
CNPC/PetroChina	[...]	[0-5%]
CNOOC	[...]	[0-5%]
Sinochem	[...]	[0-5%]
Total	[...]	100.0

Source: the Notifying Party

33. Since neither at EEA nor at global level would the proposed transaction give rise to affected markets, even when considering the activities of the other Chinese SOEs, it is unlikely that competition concerns would arise as a result of the horizontal overlap between Mercuria and Sinopec's activities.

34. The proposed transaction therefore does not raise serious doubts as a result of the horizontal overlap between Mercuria and Sinopec's activities.

4.3.2. Vertical relationship: Storage of petroleum products - Trading of crude oil and petroleum products

35. Vesta is not active in vegetable oil or gas storage and it is no longer active in crude oil storage. A small amount of its revenue was generated by incidental crude oil import at the Port of Muuga in 2011. However, this activity ceased in spring 2012 and Vesta does not envisage any further storage of crude oil in the near future. It stores no crude oil in Antwerp or Flushing.

36. For the bulk liquid storage of petroleum products at ports in the ARA region and at ports in the Baltic region, Vesta's market share is less than [5-10%] in 2011 by value (EUR million) and by volume (million m³), even when considering the narrow segmentation into i) "dirty" or "black" mineral oil products (such as crude oil and fuel oil); and ii) "light" or "white" mineral oil products (such as gasoline, diesel and naphtha).

37. The tables below show Vesta's market shares for bulk liquid storage of petroleum with regard to the Baltic region, at port level¹⁷, including the segmentation into i) "dirty" or "black" mineral oil products (such as crude oil and fuel oil); and ii) "light" or "white" mineral oil products (such as gasoline, diesel and naphtha) in 2011, by value (EUR million) and by volume (million m³):

Port of Muuga (Estonia)				
Player	By Value	% Share	By Volume	% Share
Vesta	[...]	[10-20%]	[...]	[20-30%]
VEOS	[...]	[80-90%]	[...]	[70-80%]
Total	[...]	100	[...]	100

Source: the Notifying Party

Port of Muuga	DIRTY/BLACK MINERAL OIL PRODUCTS				LIGHT/WHITE MINERAL OIL PRODUCTS			
	By Value	% Share	By Volume	% Share	By Value	% Share	By Volume	% Share
Vesta	[...]	[10-20%]	[...]	[30-40%]	[...]	[0-5%]	[...]	[0-5%]
VEOS	[...]	[80-90%]	[...]	[60-70%]	[...]	[90-100%]	[...]	[90-100%]
Total	[...]	100	[...]	100	[...]	100	[...]	100

Source: the Notifying Party

38. The storage activity in Flushing and Antwerp is analysed at ARA level since the precedents indicate a regional scope for this activity. In the port of Muuga, Vesta's market share would be at most [30-40%] in volume and approximately [10-20%] in value.

39. In relation to the Baltic region, Vesta's view is that its terminal at the Port of Muuga competes for contracts against storage providers in the entire area, including the Baltic States and certain competing Russian ports. Vesta's competitors in this region are large and well-established players with far bigger facilities. Even in the port of Muuga itself, Vesta competes against Vopak E.O.S. ("VEOS"), with a storage capacity, which is more than double the size of Vesta's. VEOS revenues at this port are also estimated by Vesta to be more than four times as large as those generated by Vesta's facilities.

40. The Parties also submit that a review of Vesta's position on a port-by-port basis is an extremely narrow sub-segmentation of the market, which bears no correlation to the realities of the wider competitive market on which Vesta operates.

¹⁷ In the port of Flushing Vesta has all the capacity ([...]) with [...] in sales.

41. When considering the storage of mineral oils at port level in Muuga, Vesta's market share is not insignificant (up to [30-40%]). However, the volumes stored at Vesta's facilities¹⁸ in this port are marginal ([...]) when compared with the volumes traded at global (3,086.4 million metric tons) and even EEA (827 million metric tons) level. In addition, Mercuria is currently Vesta's main customer¹⁹, contracting for storage capacity in Vesta's terminals; in 2011, Mercuria's business represented around [50-60%] of Vesta's revenues. Thus, it appears that Vesta does not have the market power in the storage market to significantly influence the conditions of competition upstream and so much less on the prices and supply conditions in the downstream market for trading, even when considering the narrowest product and geographic market definition.
42. Therefore, input foreclosure appears unlikely as a result of the proposed transaction.
43. Similarly, since the Parties have less than [5-10%] and less than [10-20%] combined market shares at EEA and respectively global level in the market for trading of crude oil and petroleum products, Vesta's upstream rivals have sufficient alternative customers to satisfy their sale of storage capacity.
44. Therefore, customer foreclosure appears also unlikely.
45. The proposed transaction therefore does not raise serious doubts as a result of the vertical relationship between the downstream market for storage of petroleum products and upstream market for trading of crude oil and petroleum products.

5. CONCLUSION

46. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
Signed
Joaquín ALMUNIA
Vice-President

¹⁸ Vesta's total storage capacity in the EEA is [...].

¹⁹ [...].