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Case No IV/M.1621 - ** / *** PAKHOED / VAN OMMEREN (II)

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

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

Brussels, 10. 09. 1999

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b)DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1621 – PAKHOED/VAN OMMEREN

Notification of 29.07.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 29.07.99 Koninklijke Pakhoed NV ("Pakhoed") and Koninklijke Van Ommeren NV ("Van Ommeren") jointly notified an operation by which the two companies will merge within the meaning of Article 3(1)(a) of Council Regulation (EEC) N° 4064/89 ("the Merger Regulation").

I. THE PARTIES

2. Pakhoed and Van Ommeren are international companies based in the Netherlands with activities in tank storage for crude oil, petroleum products, chemicals and vegoils, tanker shipping (inland, short sea and deep sea) and other transport related services (agencies, forwarding, stevedoring, dry cargo shipping). Van Ommeren is also active in heavy lift transporting and Pakhoed in chemical distribution.

II. THE OPERATION

3. The transaction will be effected by means of legal merger between Pakhoed and Van Ommeren, which will be amalgamated in a new company under the name of VOPAK. As a result of the exchange of shares, Pakhoed shareholders will hold 63.4% of the share capital of VOPAK and Van Ommeren shareholders 36.6%.

III. THE CONCENTRATION

4. The operation is a full legal merger and constitutes a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.

IV. COMMUNITY DIMENSION

5. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR 2 500 million (Pakhoed: EUR 3 006 million; Van Ommeren: EUR 599 million). In each of the Netherlands, France and the UK the combined aggregate turnover of the undertakings concerned is more than EUR 100 million (the Netherlands: EUR 450 million; France: EUR 346 million; the UK: EUR 232 million), whereas the aggregate turnover of each of the undertakings concerned is more than EUR 25 million in each of the Netherlands, France and the UK. Moreover, the aggregate Community-wide turnover of each of the undertakings concerned is more than EUR 100 million (Pakhoed: EUR 1 121 million; Van Ommeren: EUR 504 million). In none of the Member States of the European Union does any of the undertakings concerned achieve more than two thirds of its Community-wide turnover. The concentration fulfils the turnover thresholds of Article 1(3) of the Merger regulation and therefore has Community dimension.

V. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant Services Markets

6. There are four markets on which, as a result of the operation the parties will have a strong combined market position and which require a further assessment on competition grounds (hereinafter referred to as ‘affected markets’. These are three storage related markets and one transportation market, namely:

- the market for storage of edible oils and fats (“Vegoil Storage”);
- the market for storage of chemicals (“Chemical Storage”);
- the market for storage of petroleum products (“Petroleum Storage”); and
- the market for barging of chemicals in north-west Europe (Rhine delta, Germany, and Switzerland) (“Inland Chemical Tanker Shipping”).

7. Other (‘non-affected’) markets in which one or both of the parties are active include the liner and consignment agencies market, the market for chemical distribution, the market for storage of crude oil, the markets for ocean tanker shipping, and the markets for barging of liquids other than chemicals as well as liquid natural gas.

A.1 Storage Related Markets

8. Distinct markets for the storage of crude oil, petroleum, vegetable oils and chemicals and gas should be distinguished owing to technical and commercial considerations. The tanks used to store each of the above products are different in their technical characteristics, their size, and their side-equipment (pipeline connections, berths, jetties, etc.). Some of these differences are due to different regulatory requirements that apply to particular products, as further described below.

Vegoil Storage

9. Vegoils (or 'edible oils') are usually stored in relatively small tanks, i.e. of a size of 100m³ to 6 000m³. Since vegoils are neither flammable nor explosive, they can be stored in tanks which are located at short distance from each other, whereas other liquids such as crude oil, petroleum and chemicals, for safety reasons, must be stored in tanks which are further apart. Therefore, these other products cannot be stored in vegoil tanks. Furthermore, being edible materials, vegoils cannot be stored in tanks used previously for the storage of, for instance, chemicals. Hence, if such a switch would be considered, it could only be done after very extensive cleaning, which makes switching tanks from the storage of chemicals to the storage of vegoils, and vice versa, uneconomical. Therefore, vegoil storage can be considered as a separate product market.

Chemical Storage

10. Chemical products are stored in tanks ranging in size from some 500m³ to 20,000m³. The term "chemicals" covers two broad types of products, that is, easy chemicals (e.g. methanol, aromatics, etc.) and speciality chemicals (e.g. acrylates, MDI, TDI, etc.). Tanks for easy chemicals are relatively simple metallic constructions, as opposed to those for speciality chemicals that are more sophisticated. Market information confirmed that chemical terminals are usually equipped for both types of chemicals, given that in-coming parcel tankers usually carry both types of chemicals in each voyage. For that reason a market definition based on a single market for liquid bulk chemical storage is indicated. Nevertheless, only a one-way substitutability exists between tanks for easy chemicals and those for speciality chemicals in the sense that easy chemicals can be stored in the more sophisticated tanks for specialities. Certain third parties have claimed that for these reasons different markets should be defined for the storage of easy and specialty chemicals. Although for the reasons mentioned above, the definition of separate markets for the storage of different kinds of chemicals would not appear appropriate, for the purposes of the assessment of the current operation, the distinction between tanks for speciality chemicals and tanks for easy chemicals will be taken into account.

Petroleum Storage

11. Petroleum products are usually stored in tanks ranging in size from 3 000m³ to 60 000m³. Technically, a distinction can be made between the so-called "K-1" tanks and "K-3" tanks. This distinction relates to the level of sophistication of the tanks, K-1 tanks being technically more complex than K-3 tanks. The investigation has shown that third parties view the market for the storage of petroleum products as one single market. Again, the main reason is that storage terminals have both types of tanks, so that different petroleum products can be stored at the same terminal. Thus, it appears justified to conclude that the relevant product market consists of the market for the storage of petroleum products.

A.2 Inland Chemical Tanker Shipping (barging)

12. Inland tankers (barges) are used for the bulk transportation of products on inland waters. There are various separate product markets for the barging of liquids, namely, the inland tanker shipping for chemicals, mineral oils, vegetable oils and liquefied gases. Each of these groups requires specialised vessels that are equipped to carry a particular group of products. From all the above product groups, only the

inland chemical tanker shipping would qualify as an affected market as a result of the operation, although the market share would remain relatively low even after the operation. For this inland barging of chemicals, vessels with coated tanks and pipeline systems are required. The more sophisticated, speciality chemicals often have to be transported in double hull vessels with stainless steel tanks. As regards substitutability between the two types of vessels, the considerations with respect to chemical tank storage are also applicable, that is, easy chemicals can be loaded on vessels destined for speciality chemicals. However, given the combined market share of the parties in either the total chemical barging or each one of the specific easy or speciality chemical barging, the operation will not give rise to competition concerns. Therefore, the exact services market definition may be left open.

Integrated logistics or flow management

13. Apart from the different levels within the supply chain, such as ocean shipping, storage, inland transport, as distinct markets, as identified above, there are indications of a market development towards a single services market that integrates the above services into a single service package. Hence, it should be investigated whether the definition of one relevant market for such integrated logistics services could be upheld. That type of service would foremost be offered to larger customers who would be looking for a company able to provide a door-to-door service covering the entire supply chain (i.e., ocean shipping from the manufacturer's plant located in another continent, tank storage, transshipment within the harbour, intra-EU coastal shipping and/or inland shipping, or *vice versa*).

14. From the information available so far it seems that although the ability to offer a wider range of services may appear attractive to certain types of customers, in general the individual logistic services continue to be purchased separately by those customers. The concept of integrated logistics covers a variety of transport and transport-related services, which can be combined in many different ways to suit the individual needs of a specific customer. If the definition of such a market were to be upheld, it should go along the lines of the above distinction made above with respect to the various transported product groups, that is, logistic services for vegoils, chemicals, etc. The investigation has shown, however, that this is not a standardised, and therefore not a quantifiable activity for which a separate market analysis can be made. Moreover, since these packages are generally "tailor made" for a particular customer, they are hardly interchangeable with those developed for another customer and thus it is difficult to consider them part of one and the same market. In addition to that, the four to five firms that can currently offer more or less integrated packages, do so in addition to their core activities, but do not distinguish, in their internal organisation, between individual profit centres and integrated logistics profit centres. Therefore, it appears that although a market development towards more integrated logistic services is ongoing, one or more separate market for such services cannot be defined at this stage. Nevertheless, the ability to integrate several services is a factor relevant to the assessment of the current operation, as discussed below.

B. Relevant Geographic Markets

B.1 Storage Related Markets

15. As regards the storage related markets, the geographic areas where the merger will lead to a significant overlap are limited to the Amsterdam-Rotterdam-Antwerp range ("ARA range") for the storage of vegoil and petroleum products, and the ARA range

and the UK for the storage of chemicals. The parties claim that the geographic market definition for the storage markets is complex given that products are stored for different purposes and lengths of time, and that this determines which ports enter into competition with each other. For example, temporary storage for (immediate) use at a processing plant needs to take place in the vicinity of the factory, whereas if products are stored at a longer term for trading purposes, the range of competing storage facilities is larger. Still, to a large degree storage facilities have customers in a particular area which can be referred to as the 'hinterland'. The ports in the ARA range, to a significant extent are able to serve the same hinterland through their road, rail and inland waterway connections, as well as through their access to the Rhine delta. Similar arguments as regards hinterland connections apply to the UK as a relevant geographic market for the storage of chemicals. Competitors and customers that replied to the Commission's inquiry have largely confirmed the appropriateness of considering the above markets as relevant geographic markets.

16. Apart form the above three storage markets in the ARA range, certain third parties have claimed that a separate market would exist for liquid bulk storage in the port of Gothenburg. The parties, however, have claimed that the port of Gothenburg competes with certain other ports in Sweden and that therefore Sweden is the relevant market to consider. However, given that the investigation has not given rise to serious doubts as regards the creation or strengthening of a dominant in the port of Gothenburg (nor in Sweden as a whole), the precise definition of one or more geographic markets in Sweden can be left open.

B.2 Inland chemical tanker shipping

17. It appears on the basis of the investigation that the geographic area suggested by the notifying parties, that is, the Rhine delta (the Netherlands and Belgium), Germany and Switzerland, can be considered as the appropriate geographic market.

B.3 Integrated logistics

18. If a separate market for integrated logistic services ought to be upheld, the relevant geographic market would be defined as follows. Due to the strong inland shipping component of such integrated services, two different markets could be defined, according to the destination of the transported goods: an international market for out-bound transportation, whereby goods manufactured in continental Europe are barged to the ARA range and subsequently shipped to various destinations around the world; and an EU-wide market, potentially narrowed down to the ARA range and along the Rhine, for in-bound transportation, whereby goods manufactured in various parts of the world are shipped to the ARA range and subsequently delivered by coastal or inland tankers to continental Europe.

C. Competitive Assessment

C.1 Storage Related Markets

19. Within the ARA range the parties are the largest suppliers of storage facilities and terminal services. According to the parties' figures, the operation would result in the following combined market shares, based on the available independent storage capacity in the ARA range:

– vegoil storage: [50 - 60%]

– chemical storage: [60 - 70%]

– petroleum storage: [40 - 50%]

20. The proposed merger would lead to the creation of by far the strongest player in the markets for storage of petroleum, chemicals and vegoils in the ARA range. In the absence of sufficiently large actual and potential competitors, the operation is likely to raise serious doubts as to its compatibility with the common market. However, since the overlap created by the merger in the ARA range will be eliminated by the proposed commitments, as described below, no competitive concerns will remain as a result of the merger.

21. It is noted that the capacity for petroleum storage includes capacity [250.000 – 450.000 m³] held exclusively by Van Ommeren for a third party on the basis of a long term lease arrangement, which will last for another [more than 15 years] years (until the year [deleted business secret]). Furthermore, part of the parties' capacity (of Van Ommeren) is held for strategic storage (amongst others for the government agency COVA) and therefore is also not available on the open market. That capacity amounts to some [100.000 – 250.000 m³]. When taking account of these factors, the independent capacity available to the parties is reduced by [450.000 – 600.000 m³], which means that the overlap created by Van Ommeren amounts to some [0,5 – 1,5 %] in terms of share of capacity.

22. In the UK, the overlap of the parties' activities is in the area of the storage of chemical products. Their combined market share is of [30 – 40 %]; however, the increase in market share resulting from the concentration is negligible (less than [0,5 – 2,5 %]), given Pakhoed's limited presence (Pakhoed has a 50% interest in Tees Storage, a jointly owned storage facility of Pakhoed and GATX). The combined market share as well as the limited overlap indicate that the operation would not result in the creation or strengthening of a dominant position in the storage of chemical products in the UK.

23. In Gothenburg, the overlap of the parties' activities is in the area of the storage of petroleum and chemical products. In Sweden, the parties' figures show that for petroleum and chemicals bulk liquid storage they would have a combined market share of around [5 – 15 %] and [5 – 15 %] respectively and in Gothenburg of [30 – 40 %] in terms of capacity both for petroleum and chemicals storage. Furthermore, the overlap resulting form the merger is very limited, given that the presence of Pakhoed in petroleum storage is limited to a share of [1 – 5 %], whereas Van Ommeren's share in chemical storage is [1 – 5 %] of total storage capacity in Gothenburg. These figures indicate that the operation would not result in the creation or strengthening of a dominant position on any of these storage markets, neither in Gothenburg nor in Sweden as a whole.

C.2. Inland Chemical Tanker Shipping

24. The Inland Chemical Tanker Shipping market on the Rhine is served by nine main operators. Currently their fleet comprises [deleted business secret] vessels in total, of which [deleted business secret] are equipped with stainless steel cargo tanks.

25. The combined market shares of the merging parties in terms of vessels will be of [15 – 25 %] ([deleted business secret] vessels out of [deleted business secret]). The

combined entity will have [20 – 30 %] of the speciality chemicals vessels (i.e. double hull vessels equipped with stainless steel tanks) and [15 – 25 %] for easy chemicals vessels. In terms of barging capacity, the combined entity will have [25 – 35 %] of the total stainless steel capacity and [15 – 25 %] of the total non-stainless steel capacity. Apart from a multitude of smaller competitors, strong competitors in double hull stainless steel vessels include Stolt-Nielsen, Gefo/Unitas and Wijgula with [30 – 40 %], [5 – 15 %], and [5 – 15 %] market shares, respectively. In the non-stainless steel vessels other competitors like Jaegers/Combitank ([15 – 25 %]), Lehnkering ([25 – 35 %]), and Wijgula ([5 – 15 %]) and a number of smaller operators are also active.

C.3. Integrated logistics or flow-management

26. Apart from the fact that in the individual storage markets the new entity will attain high market shares, the position of the new entity could be enhanced through the vertical effects of the merger. Such vertical aspects are found in relation to the nascent integrated logistics services market described above. The vertical integration of the parties in terms of tank storage and barging could enable them to strengthen their integrated, door-to-door management capabilities.

27. However, it has to be noted that the parties are not present in ocean or coastal shipping for vegoils, and therefore they lack one of the critical components of such an integrated logistics chain, thus eliminating the concerns with respect to vegoils flow-management. The same consideration can apply with respect to petroleum flow-management, as the parties are not present in ocean shipping for petroleum products, therefore excluding autonomous possibilities for a world-wide provision of petroleum-related integrated logistics, and leaving them with limited possibilities for an EU-wide provision of such services. Finally, the parties are not present at all in ocean or deep-sea shipping for any of the above products. This may be a serious handicap to the autonomous provision of integrated logistics, in that door-to-door logistics depend to a high degree on the intercontinental transportation of the considered goods. Therefore, since the parties lack one or the other essential component of the so-called integrated logistics services, the conglomerate or other vertical effects of the merger would be restricted.

28. One could furthermore consider that a dominant market position for one of the elements in the supply chain, such as storage, could be used as a leverage tool for attracting customers for the other related services. However, it has to be noted that as a result of the commitments discussed below, the parties would not obtain a dominant position in the bulk liquid storage markets in the ARA range, and therefore this argument would no longer apply.

VI. COMMITMENTS

Description of the commitments

29. In order to address the competitive concerns outlined above on the storage markets for vegoils, chemicals and petroleum products, the parties have submitted a divestiture package, by which they propose to divest the following terminals to one or more purchasers. The essential elements of the commitments are the following:

30. The parties will divest the following terminals:

(i) Pakhoed's Paktank Pernis terminal in Rotterdam;

(ii) Pakhoed's Paktank Botlek terminal in Rotterdam; and

(iii) all of Van Ommeren's shares in Gamatex N.V. ("Gamatex") in Antwerp.

The package will include equipment and assets that are essential for the good functioning of the terminals. Furthermore, the commitments aim to ensure that the purchaser(s) will have access at equitable conditions to assets, such as pipeline connections, that are not on the premises of the terminals, but which are essential for their operation. The purchaser shall be a viable existing or prospective competitor independent of and unconnected to the parties and possessing the financial resources to continue the divested businesses. The purchaser shall have the ability to contribute to effective competition in the market for independent storage in the ARA range and must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the divested businesses.

31. The Parties shall be deemed to have complied with this undertaking if, within a period not exceeding [deleted business secret] from the date of the Commission's decision clearing the proposed merger subject to the fulfilment of this undertaking, they have entered into a binding agreement for the sale of all of the divested Businesses, provided that the closing of the sale is concluded within a fixed time limit agreed to by the Commission.

32. Prior to the completion of the sale, the divested businesses will be managed as distinct and saleable entities separate from the other businesses of the parties. The parties shall implement all necessary measures to ensure that they shall not obtain from the management of the divested businesses any business secrets, know-how, commercial information, or any other industrial information or property rights of a confidential or proprietary nature relating to the divested businesses. A trustee will be nominated to monitor the parties' respect of the above obligations. If no binding agreement is concluded within [deleted business secret] months, the trustee will be given responsibility to conduct the sales process, for completion within [deleted business secret] after the Commission's decision.

Assessment of the commitments

33. Through these divestments, the overlap created by the merger with respect to vegoil, chemical and petroleum storage would be completely eliminated for vegoils and petroleum storage and nearly completely eliminated for chemical storage, as explained below.

Vegoils Storage

34. As regards vegoils, the terminal of Pakhoed in Pernis (capacity of 350.000m^3 corresponding to a market share of [20 – 30 %]) would be divested, thus completely eliminating the competitive overlap.

Chemical Storage

35. For chemical products, the divestiture would mean the selling of Van Ommeren's 50% interest in the independent Gamatex terminal in Antwerp (leading to a reduction by 82 500m³), as well as the selling of Pakhoed's Botlek terminal in Rotterdam, (which has a capacity of 560 000m³ in chemical storage). These two terminals constitute [10 – 20 %] of the total market for chemical storage. As a result, in terms of overall capacity, the merger will result in an increase of only [1 – 3 %], leading to a share of capacity in the ARA range of [40 – 50 %] for the new entity. In this respect, it is noted that part of the (excess) capacity divested in storage of petroleum products (see below) can be used for (easy) chemical storage as well, which would further reduce the remaining overlap. At the parties' terminals, such switching takes place on a regular basis. In the segment of speciality chemicals, figures provided by the parties show that the divestitures will fall short of eliminating the overlap by 1.1%. Under these circumstances, it can be concluded that the divestitures are able to remove any serious doubts in the chemical storage market.

Petroleum Storage

36. In petroleum storage, the terminal of Pakhoed at Botlek (999 000m³) Van Ommeren's 50% interest in the Gamatex terminal in Antwerp (150 000m³) will be divested. The divestment would more than reduce the parties' overlap in the market for petroleum storage when based on fully independent storage capacity, as explained above (a reduction by nearly [5 – 15 %], against a [5 – 15 %] overlap). The new entity would have a market share of [30 – 40 %] of overall capacity after the divestment.

Appropriateness of the proposed commitments

37. The commitments proposed by the parties appear appropriate as regards the storage of vegoils and petroleum products, as the overlap created by the merger will be completely eliminated. For chemical products, a small degree of overlap will remain, but this increment is limited and the supplementary tank capacity divested in petroleum storage could be switched to chemical storage use.

VII. CONCLUSION

38. On the basis of the above, it may be concluded that following the proposed divestments in storage terminals in the ARA range, the operation is not likely to raise serious doubts as to its compatibility with the common market. Therefore, subject to the fulfilment of these commitments, the operation is declared compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,