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Case No COMP/M.2597 - VOPAK / VAN DER SLUIJS

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: **Case No COMP/M.2597 – Vopak/Van der Sluijs/JV**
Notification of 24/01/2002 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 24/01/2002**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89[2] by which the undertakings Vopak Mineral Oil Barging B.V., belonging to the Royal Vopak Group (hereinafter: "Vopak"), and Van der Sluijs Holding Statendam B.V., belonging to the Van der Sluijs Group (hereinafter: "VDS") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a newly created company ("Interstream Barging") constituting a joint venture.

I. THE PARTIES

2. The Dutch Vopak Group is active in oil and chemicals logistics and distribution of chemicals. It was created through the merger between Pakhoed and Van Ommeren, which was cleared subject to conditions by the Commission in 1999 (case M.1621).

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[1] OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17); hereinafter: the Merger Regulation.

[2] OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

3. The Van der Sluijs group (the Netherlands) is active in storage, transport, wholesale and retail of mineral oils in the Netherlands, Belgium and Germany as well as in the sale and transport of gas (LPG and propane gas) in the Netherlands.

II. THE OPERATION

4. The JV will be active in the area of inland mineral oil tanker shipping (barging). The parties will transfer their entire activities in inland mineral oil tanker brokering in the Benelux and the German Rhine area to the JV, and they will cease their own activities in this field of business. [...] In addition, Vopak will remain active outside the JV in inland mineral oil tanker shipping in the Swiss Rhine area and Northern Germany.

III. CONCENTRATION

5. The JV will be jointly controlled by Vopak and VDS, [...]

6. The joint venture will concentrate the relevant businesses of Vopak and VDS in inland mineral oil tanker brokering in the Benelux and Rhine area. It will be established for an indefinite term. It will also have sufficient resources since the parent companies will contribute all assets and contracts required. [...]

7. In the light of the above, it is concluded that the joint venture will be jointly controlled by Vopak and VDS, and that it will perform, on a lasting basis, all the functions of an autonomous economic entity. It follows that the notified transaction is a concentration pursuant to Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[3] (Vopak € 5.933 billion, VDS € 1.644 billion). Each of Vopak and VDS have a Community-wide turnover in excess of EUR 250 million (Vopak € [...] , VDS € [...]), but they do not each achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State [...] . The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

1. Relevant markets

a) Relevant product markets

9. According to the parties, the relevant product market for the assessment of the present concentration is inland mineral oil tanker shipping (barging).

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[3] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

10. Inland tankers (barges) are used for the bulk transportation of products on inland waters (rivers and canals). In the Pakhoed/Van Ommeren decision[4], the Commission stated that 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 ships that are equipped to carry a particular group of products.

11. The activities of the parties which will be combined in the JV consist of inland mineral oil tanker brokering. The parties mainly provide services to the oil companies seeking transport services for their cargo. The broker enters into transport contracts and is responsible for the transport vis-à-vis the cargo owner . The actual transport is carried out with barges which are either owned by the broker [...] , or which are chartered by the broker from third party ship-owners on the basis of 1-5 year or spot contracts [...] . In that respect, brokers at the same time offer services to ship-owners seeking the affreightment of their ships. Some ship-owners also offer their shipping services directly to oil companies without going via a broker.

12. The parties submit that broker services are part of an overall shipping market, comprising all ships available for the oil companies, regardless of whether they are affreighted directly or via a broker. The market investigation undertaken by the Commission broadly supported this view. All market participants approached by the Commission confirmed that brokering services form part of an overall shipping market, in particular as from a customer's point of view, the ownership situation of the barges which are affreighted are of no relevance. Therefore it can be concluded that brokering forms part of the inland mineral oil tanker shipping market.

13. From the Commission's investigation, some indications arose that the inland mineral oil tanker shipping market might be subdivided into two segments for transport services. These segments concern transport of so called "dirty" or "black" mineral oil products (such as crude oil and fuel oil) on the one hand, and of "clean" or "white" products (such as gasoline, diesel and naphtha) on the other hand. Barges used for the transport of black products need to be equipped with heating elements to keep the cargo at a temperature of around 80° C during transport. Barges dedicated to black products can also transport white products, but not vice versa. The switch from black to white products requires the cleaning of the barge, which can cost up to € 25 000 per barge. The parties estimate that for longer periods of half a year or longer, it may be profitable to use a black product barge for the transport of white products, if transport rates for clean product are higher. All the parties' barges which are equipped for the transport of black products (Vopak: [...] barges, VDS: [...]) are currently used for white cargo. Again, the exact delimitation of the market can be left open, as no concerns will arise in either case.

14. The Commission's investigation has confirmed the view taken in earlier decisions that the barging of chemicals should not be included in the relevant market. Although in times of peak demand some mineral oil products are also transported by chemicals barges, substitutability between these barges appears to be limited. Substitutability is only possible one way. Chemicals barges can transport some mineral oil products, but due to special quality and equipment requirements, chemicals can only be transported

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4 Commission Decision of September 10, 1999 – Case No. IV/M.1621 – Pakhoed/Van Ommeren.

in dedicated chemicals barges. If a chemicals barge switches to mineral oil products (and back), it has to undergo costly cleaning procedures, to which the costs of time lost during the cleaning have to be added. Cleaning costs vary according to the mineral oil product to be transported, and are lower for light products such as naphtha and MTBE. In addition, chemical tanker freight rates are usually [considerably] higher than mineral oil tanker transport. Against the background of the additional cleaning costs, a considerable increase in mineral oil barging would be necessary to make a switch profitable, and then only for a few mineral oil products for which cleaning costs are limited. [...]

15. The parties will remain active in several related product markets, namely the storage and distribution of petroleum products. In addition, Vopak is active in neighbouring markets such as chemical storage, distribution and inland tanker shipping, vegetable oil storage and inland tanker shipping, inland liquefied gases tanker shipping and ocean tanker shipping. However, the parties' market share remains below 25 and even below 15% on all these markets except for Vopak's activities in storage of petroleum products, chemicals and vegetable oils as well as in inland chemical tanker shipping. The delimitation of these markets is broadly in line with the findings of the Commission in the Pakhoed/Van Ommeren case, which the Commission has no reason to alter for the purposes of this case.

b) Relevant geographical markets

16. The parties submit that the inland mineral oil tanker shipping market comprises the Benelux Rhine delta and the German and Swiss part of the Rhine and its connecting canals and rivers. The parties argue that Northern Germany does not form part of the same market. This has been broadly confirmed by the Commission's investigation. Many Rhine barges are not able to sail in Northern Germany due to draught and size restrictions. Furthermore, it appears that mineral oil cargo is not shipped between the Amsterdam -Rotterdam - Antwerp area ("ARA") and Hamburg regions via inland rivers, as this would be too time consuming, but rather by short sea tanker along the coast, which is easier and cheaper.

17. In the Pakhoed/Van Ommeren case, the Commission took the position that, with regard to *chemical* barging, the Rhine delta (the Netherlands and Belgium), Germany (as a whole) and Switzerland can be considered as the appropriate geographic market. However, it does not seem necessary to decide on the exact delimitation on the market since the market investigation confirms the parties submission that on the basis of both possible market definitions the concentration does not create competition concerns.

18. As regards storage markets, the Commission defined separate markets for the ARA area on the one hand and the UK on the other hand. The parties follow this approach, which the Commission has no reasons to alter for the purposes of the present case.

2. Compatibility with the common market

a) Horizontal effects

19. The horizontal effects of the concentration do not lead to affected markets, regardless of the exact delimitation of the markets.

20. The parties estimate the total mineral oil barging market in the Rhine delta and areas at 795 barges with a total capacity of 1,020,000 tons, which was broadly confirmed by the Commissions investigation[5]. Vopak does not own barges, but charters on average [30-50] barges. VDS owns [15-25] barges, and charters on average [5-15] additional ships. The JV's market share would thus reach around [5-12]% in terms of the number of barges, and [10-15]% in terms of capacity. If Vopak's activities in Switzerland, which will remain outside the JV, are included, the market share will rise to [10-15] and [10-15]% respectively. If the relevant market would include the whole of Germany, and Vopak's activities in Northern Germany, as well as those in Switzerland (which both remain outside the JV) were included, the shares would be [10-15] and [10-15]% respectively.

21. The strongest competitors of the parties are Stetra (around [5-10]% of barges and around [5-10]% of capacity on a market excluding Northern Germany), Plouvier ([5-10]% in both terms) and Jaegers (around [0-5]%). In addition, there is a large number of other competitors active on the market.

22. There are no exact market figures available for the transport of white and black products separately. However, it appears that the competitive situation would not differ significantly. The parties estimate that approximately 40 to 50 barges permanently transport black products in the Benelux, German and Swiss Rhine area, and that another 10 are partly used for black and partly for white products, which results in an average market volume of 45-55 barges. As regards the transport of black products, it has to be noted that VDS only has [...] suitable for those products [...], and Vopak currently uses [...] of those barges, which are chartered from third parties. Thus, the overall position of the parties in such a sub-market consisting of at least 45 barges would be [5-15]%, and the overlap resulting from the transaction would be minimal. In addition, all of these barges of the parties are currently used for the transport of white products, so that there is no actual overlap with regard to black products. As far as barges for the transport of white products are concerned, the market share of the parties would increase by less than [1-5] %, as a result of a reduced market volume of at least 740 barges (795 less a maximum of 55 "black" barges). Against the background of the moderate market shares of the parties on the overall market, this does not give rise to competition concerns.

23. Consequently, it cannot be concluded that the horizontal aspect of the concentration raises any competitive issues as a result of which effective competition would be significantly impeded.

b) Vertical effects

24. The parents will remain active on several related and neighbouring markets as mentioned above. However, their market share remains below 25% and even below 15% on all these markets except for Vopak's activities in storage of petroleum products, mineral oil barging in Northern Germany, storage of chemicals, vegetable oils and inland chemical tanker shipping. VDS is not active on any of these markets,

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5 When market participants indicated slightly different figures, these figures were all higher than those provided by the parties. The parties submissions can therefore be taken as the basis for a worst case analysis, as on a larger market their market shares would be lower.

with the exception of VDS' ownership of some small size inland depots, which significantly differ from Vopak's storage facilities.

25. As regards storage of petroleum products, VDS owns [5-15] petroleum product depots in the Netherlands and [1-10] in Belgium. They are all located inland, whereas Vopak's depots are all situated at the ARA ports. There are 35 inland mineral oil depots in the Netherlands, which are all accessible by barge. With regard to Dutch inland depots, VDS would thus have a market share of [14-40]% in terms of number of depots. In terms of throughput volume for third party customers, the parties estimate that the share would be [5-20]%. In Belgium, there are 50-70 inland depots, which would lead to a share of [1-20]% for VDS. The parties estimate the throughput share to be less than [5-10]%, as the depots of VDS' competitors in Belgium are generally larger than the VDS depots. VDS uses [a significant proportion] of its depot capacity for its own petroleum business, i.e. for the distribution of cargo to its own petrol stations (retail) or to third parties (wholesale). Vopak does not have such activities. In the light of VDS' moderate position, a vertical concern related to storage does not seem to arise with regard to VDS.

26. Market participants raised vertical issues mainly with regard to Vopak. Vopak's share in the Amsterdam-Rotterdam-Antwerp ("ARA") range would be [20-40]%, following divestments resulting from the Commission's decision in the Pakhoed/Van Ommeren case which were necessary to declare the transaction compatible with the common market. It appears that the competitive situation did not change substantially since that decision.

27. However, there does not seem to be a substantial link between the mineral oil barging and storage services of the parties. Of the parties' barge shipments, only a very small proportion has Vopak facilities as the point of departure or destination. For example, [...].

28. The investigation further showed that contracts combining barging and storage services are of no practical relevance. The most important customers of the barging services, namely the big oil companies, in many cases do not require storage services, as they dispose of their own storage facilities. Several other customers stressed that they insist on separate offers and contracts for the two services in order to maintain transparency and the possibility to compare several offers. This was confirmed by a number of barging competitors.

29. It can therefore be concluded that the transaction will not substantially strengthen Vopak's activities in the storage market.

30. As explained above, the parties' strength on the barging market would not be significantly enhanced if the geographic market included Northern Germany and Vopak's activities were included in the parties' market share. If Northern Germany was considered as a separate market, there are no indications that the JV could strengthen Vopak's position in that separate market.

31. Vopak has a market share of [30-40]% in chemical storage in the ARA range and the UK, of [25-35]% in vegetable oil storage in the ARA range, and of less than [25-35]% in inland chemical tanker shipping. The JV also does not seem to strengthen Vopak's position on these markets. They all relate to different types of cargo and form separate product markets, which require different facilities and equipment. For instance, mineral

oil tankers cannot be used for the transport of chemicals or vegetable oils, and the same applies to the respective storage facilities.

32. Consequently, it cannot be said that the concentration would raise any competitive concerns with regard to any market upstream or downstream from the market in which the JV is active.

c) Co-ordination issues

33. Although both parties outside the JV are active in the storage of petroleum products in the broad sense, their respective activities differ significantly in qualitative and quantitative terms. Vopak owns several storage facilities in the ports of the ARA region. These are large size depots of up to [several] million cbm, which are fed by deep sea tankers and are dedicated to medium and long term storage of up to several years. VDS owns [...] small size depots of [some tens of thousands] cbm, which are all situated inland and are only accessible by barge. They are not used for longer term storage, but as an unloading facility for barges, with immediate onward distribution of the cargo by truck. In fact, a number of market participants in the Commission's investigation expressed the view that VDS is not active in petroleum storage. Against this background, the transaction does not appear to have the object or effect of competitive co-ordination between independent undertakings (Art.2 (4) MR).

VI. CONCLUSION

34. 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 (EEC) No 4064/89.

For the Commission

Signed by Mario MONTI,
Member of the Commission