

EN

***Case No COMP/M.5689 -
BOMINFLOT/SBI
HOLDING***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/12/2009

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EUROPEAN COMMISSION

Brussels, 18/12/2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5689 – BOMINFLOT/ SBI HOLDING
Notification of 18 November 2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 November 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking BOMINFLOT Bunkergesellschaft für Mineralöe mbH& Co KG ("Bominflot", Germany) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the whole of SBI Holding B.V. ("SBI", the Netherlands) controlled by Seatrade Holding B.V. ("Seatrade", the Netherlands) by way of purchase of shares (the "proposed transaction").

I. THE PARTIES

2. Bominflot's activities include (i) physical supply of marine fuel oil (bunker fuel) to seagoing ships, (ii) supply of lubricating oils, (iii) supply of marine gasoil, (iv) bunker fuel trading, and (v) operation of tank farms and barges. Bominflot's physical bunkering operations in the EU are located in ports in Germany, Estonia, Greece, Spain and the United Kingdom /Gibraltar.

¹ OJ L 24, 29.1.2004 p. 1.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

3. SBI is currently solely controlled by Seatrade. It is active in (i) physical supply of bunker fuels, (ii) supply of lubricating oils, (iii) trading of bunker fuels and lubricating oils, and (iv) supply of marine gasoil. SBI's on-the-ground operations² are limited to the Dutch ports and are provided through a subsidiary, Oliehandel Klaas de Boer B.V.
4. Bominflot and SBI together are referred as the "Parties".

II. THE OPERATION

5. The proposed transaction consists of Bominflot acquiring [more than 50]% of the issued shares and voting rights in SBI. With these rights, Bominflot alone will enjoy the power to determine the strategic commercial decisions in SBI. The remaining shareholders will not be able to veto strategic decisions in SBI, since such decisions will require a majority of [...]of votes and issued shares. Thus, Bominflot will acquire sole control over SBI.
6. It follows that the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined worldwide aggregate turnover³ of the undertakings concerned is more than EUR 2.5 billion (Bominflot: EUR [...] million; SBI: EUR [...] million). Bominflot and SBI achieve a combined aggregate turnover of more than EUR 100 million in at least three Member States, [four Member States]. Further, Bominflot and SBI achieve an aggregate turnover of more than EUR 25 million each in [three Member States], but they do not 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 pursuant to Article 1(3) of the EC Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. The proposed transaction concerns the physical supply of bunker fuel, trade in bunker fuel, supply of lubricating oils and marine gasoil to the shipping industry. The Parties' activities in physical supply of bunker fuels concern different Member States, whereas their bunker trading activities as well as their activities as suppliers of lubricating oils and marine gasoil, however limited in scale, take place across Europe. Additionally, Bominflot (but not SBI) is active in the wholesale market for supply of bunker fuels (cargo trading), which is an upstream market to bunkering and bunker trading.

² Physical supply of marine fuel oil (bunker fuel) contrary to bunker trading which does not require a physical presence on the ground.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

A. Physical supply of bunker fuel and bunker trading

Product market definition

9. Marine (bunker) fuels are used in marine engines which power marine vessels. They are residual heavy fuels constituting bottom draw from the refinery, left at the end of the refining process after cleaner and higher value fuels such as diesel and petrol have been refined. They are viscous and high in contaminants and need to be heated before combustion in marine diesels. Marine fuels are also sold for consumption in marine type diesels used on-shore, e.g. for small scale power generation. Marine fuels are a commodity product for which technical specifications are the same world wide and are classified in different viscosities; they are bought and sold mostly on a spot basis.
10. The Commission therefore regarded marine fuels as a separate product market⁴ or possibly part of the broader market comprising all residual fuels (i.e. both marine and industrial fuels)⁵.
11. The Parties are of the opinion that bunker fuel should be distinguished from other residual fuels such as industrial fuels. In their view, the physical supply of bunker fuel and bunker fuel trading are part of the same product market on the retail level of supply as the customers do not differentiate between the services provided by bunkering firms and the bunker trading firms. They submit that bunker traders verify the availability and conditions of supply of bunker fuels with various bunker companies, purchase the bunker fuel from the physical bunker company and resell the fuel to their customers without, however, being involved in the actual physical process of refuelling.
12. The market investigation confirmed that marine fuels should be considered separately from industrial fuels due to their different applications in different types of engines and physical specifications such as viscosity, sulphur and metals content. Moreover, there should be a distinction between bunker fuel supplied to end users (i.e. at retail level) on the one hand and the so-called cargo trading, i.e supply of bunker fuel to traders and bunkering firms at the wholesale level due to different requirements of customers at these two levels of supply chain and price differences⁶. It follows that for the purpose of the proposed transaction, marine fuels will be assessed separately from industrial fuels and within marine fuels retail supply to end users and cargo trading will be distinguished.
13. As regards the distinction between physical supply of bunker fuels and bunker trading, the market investigation showed that indeed a large number of customers buys bunker fuel from physical suppliers as well as traders, however some indicated that they have a preference for entering into contracts directly with physical suppliers. In general, the majority of customers, who responded to the Commission market investigation, does not differentiate between

⁴ Case No M.063, Elf/Ertoil.

⁵ Case IV/M.1301 – Texaco/Chevron, para 15, Case COMP/M.4208 – Petroplus/European Petroleum Holdings, para 10.

⁶ It should be noted, however, that there is some interaction between these two levels of supply as the quality of the product is the same and individual bunker transactions might be very large.

services provided by these two types of companies but chooses their supplier based on price and quality of the product. However, there seem to be differences in legal, regulatory and administrative requirements that need to be fulfilled in order to operate as a physical supplier on the one hand and as a bunker trader on the other hand. In any event, it is not necessary to conclude whether bunker trading should be considered as a part of the market for retail supply of bunker fuel to end users or not as the competitive assessment does not change regardless of the exact product market definition.

Geographic market definition

14. In a previous case, the Commission indicated that the market for the sale of residual fuels, including bunker fuels and industrial fuels, is (at least) national in scope⁷.
15. The Parties in principle share the view that the market for the sale of marine fuels (including bunker trading, supply of lubricating oils and marine oil) is national (or wider) in scope. They point out that bunkering of ships is not a stationary activity and, as such, not limited to a fixed location. Furthermore, many important parameters of competition, such as product ranges, sources, quality and prices are decided centrally and not on a local level. According to the Parties, market conditions along the coastal line several Member States are homogenous and barges supply bunker fuel to customers across national borders.
16. The market investigation revealed that customers of bunker fuels, that are frequently big international shipping companies, do organise their sourcing at the global level. However, it appears that there are quite significant differences in price levels across the EEA, even within one and the same Member State. Generally, prices of bunker fuel at the ARA range (encompassing the ports of Amsterdam, Rotterdam, Antwerp and neighbouring regions Zeeland, Ghent, Dunkirk) are lower than in the German ports due to vicinity of Rotterdam as a major cargo trading centre. Barges supplying bunker fuel seldom travel between the Dutch and the German ports and the competitive environment as regards supply of bunker fuel at the retail level in the Dutch ports on the one hand and in the German ports on the other hand diverge. Ultimately, it is not necessary to conclude on the exact geographic scope of the relevant market(s) since the competitive assessment does not change regardless of the exact geographic market definition.

Competitive assessment

(i) Horizontal overlaps

17. As already mentioned above, the Parties' activities as physical suppliers of bunker fuel concern different Member States as SBI is active only in the Dutch ports whereas Bominflot's activities take place elsewhere in the EEA (namely in Germany, Estonia and Gibraltar). Hence, the Parties' activities overlap horizontally only with regard to bunker trading (if considered as a separate product market) and with regard to a wider market comprising both physical supply of bunker fuel and bunker trading.

⁷ Case IV/M.1301– Texaco/Chevron, para 27.

18. Assuming that the relevant market comprises both physical supplies of bunker fuel and bunker trading⁸, the Parties' combined market share in Germany would be slightly below [20-30]% and the increment brought about by the proposed transaction would amount to [0-5]%. In Estonia, the combined market share would be approximately [20-30]% with an increment of [0-5]%. In Germany, the Parties face competition from O.W. Bunker ([20-30]%), Shell ([10-20]%), Total ([0-5]%) and other smaller bunkering or bunker trading companies. In Estonia, the Parties' competitors are NT Marine ([50-60]%), Oiliken Bunker ([0-5]%), Bergen Bunkers ([0-5]%) and others. In all other Member States treated separately, in the German and the Dutch ports taken together and in the EEA as a whole, the Parties' combined market shares are [5-10]%.
19. In case physical trading of bunker fuel is considered, the Parties' combined market share in any Member State and in the EEA does not exceed [10-20]%.
20. The Parties submit that competition concerns are excluded for the following reasons: (i), the relevant markets are spot trading markets where purchase decisions are based on price (ii) the markets are highly transparent, (iii), there are no market entry barriers and market entry by physical traders and bunker traders occurs frequently, and (iv), due to the fact that SBI's activities as a physical supplier of bunker fuel are limited to the Netherlands, where Bominflot is only active as a bunker trader, the proposed transaction will not result in a decrease of physical suppliers of bunker fuel in any Member State.
21. The market investigation carried out by the Commission has indicated that the proposed transaction will not have any appreciable impact on any of the relevant markets. There appears to be vigorous competition for the retail supply of bunker fuel in the Netherlands, Germany and Estonia. This is mainly due to the fact that customers are price-driven and in the position to switch supplier easily given that the majority of contracts for the supply of bunker fuels are indeed concluded on the spot basis⁹. Indeed, the majority of respondents indicated that end-users of bunker fuels do switch their suppliers frequently. Prices for bunker fuel are rather transparent due to reports by independent reporting agencies such as PLATT; they are volatile as they depend on the crude oil prices and thus may change daily. Furthermore, the Commission' market investigation confirmed that entry barriers are rather low and storage and other necessary assets (e.g. barges) are easily available in the relevant ports.
22. In view of the low increment brought about by the proposed transaction and the results of the market investigation, the Commission concludes that the proposed transaction does not raise any competition concerns with regard to the retail supply of bunker fuel.

⁸ Regardless of whether or not marine lubricants and marine gas oils should be included into the relevant product markets, as assumed by the Parties.

⁹ Some customers do enter into long-term contracts. However, the typical duration of such contracts is 3-12 months.

(ii) Vertical relationships

23. On the wholesale level, referred to as cargo trading, bunker fuels are sold to traders or bunkering firms. The Parties submit that cargo trading is an upstream market to bunkering and bunker trading.
24. It must be noted that there is a vertical relationship between the Parties in the sense that Bominflot (but not SBI) is active in cargo trading which – further to the results of the Commission's market investigation - can be considered as an upstream market in relation to bunkering and bunker trading. However, Bominflot's position in cargo trading in any Member State and the EEA market does not exceed [0-5]%. It follows that the proposed transaction will not result in any vertical concerns.

B. Marine lubricants and marine gas oil

Product market definition

25. Marine lubricants are used to lubricate marine diesel engines of deep draft vessels and are therefore specific lubricants because of the special features and performance requirements of marine diesel engines. There are three main types of these lubricants: cylinder oils, crankcase oils and trunk piston engine oils ("TPEO's")¹⁰. In the lubricants sector, the Commission has previously distinguished different product markets for automotive, industrial, marine and aviation lubricants.¹¹
26. Marine gas oils are used to power electric generators on seagoing vessels and as fuels for inland waterway vessels. The Commission has not previously dealt specifically with marine gas oils.
27. The Parties believe that at the retail level, supply of lubricating and marine gasoil is only ancillary to the sale of bunker fuel and therefore, the sale of both lubricating and marine gasoil should be considered as a part of the market for bunker fuel.
28. The market investigation did not confirm the Parties' views but provided indications that marine lubricants and marine gas oils should be treated separately from the retail supply of bunker fuel. However, with regard to the proposed transaction it is not necessary to define the relevant product markets for marine lubricants and marine gas oil because, in all alternative definitions considered, the proposed transaction would not raise competition concerns.

Geographic market definition

29. The Commission considered the relevant geographic market for lubricating oils as EEA-wide or world-wide in scope¹². The Parties consider that the relevant markets for marine lubricants

¹⁰ Case IV/M.1301 – Texaco/Chevron, para 18.

¹¹ Case No.IV/M.727 – BP/Mobil; case IV/M.1301 – Texaco/Chevron, para 14.

¹² In Case IV/M.1301– Texaco/Chevron, para 27 the Commission contemplated the question of the relevant geographic market for marine lubricants, but the final definition was eventually left open.

and marine gas oils, if treated separately from the supply of bunker fuel, should be considered as at least national in scope.

30. The market investigation confirmed that the relevant markets for marine lubricants and marine gas oils are at least national in scope but the question can ultimately be left open as the proposed transaction does not raise competition concerns under any alternative geographic market definition.

Competitive assessment

31. The Parties' activities overlap mainly with regard to marine gas oils. In Germany, the Parties' combined market shares would amount to approximately [30-40]% (with an increment of [0-5]%) and in Estonia, the combined market shares would be about [20-30]% with an increment of slightly above [0-5]%. There are several competitors in both Member States. The market investigation has indicated that the proposed transaction would not lead to any meaningful change in the competitive conditions in the market for marine gas fuels.
32. Under all other possible product and geographic market definitions, the Parties' combined market shares are well below [10-20]%.
33. In view of a limited overlap between the Parties' activities in supply of marine gas oils and marine lubricants and the results of the market investigation, the Commission concludes that the proposed transaction does not raise any competition concerns with regard to these markets.

V. CONCLUSION

34. For the above reasons, the 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 Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission