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***Case No COMP/M.6463 -
MARQUARD & BAHLIS /
BOMINFLOT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/03/2012

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EUROPEAN COMMISSION

Brussels, 19/03/2012

C(2012) 1951

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6463 - MARQUARD & BAHLS/ BOMINFLOT
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 13 February 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Mabanaft Bunker Holding GmbH & Co. KG, Mabanaft Tanklager Hamburg Invest GmbH & Co. KG, Mabanaft Tanklager Kiel Invest GmbH & Co. KG, and Mabanaft Tanklager Bremerhaven Invest GmbH & Co. KG (Germany), all belonging to Mabanaft GmbH Co. KG, which belongs to Marquard & Bahls AG ("M&B", Germany), acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of Bominflot Bunkergesellschaft für Mineralöle mbH & Co. KG ("Bominflot", Germany) by way of purchase of shares and assets.² ("the proposed transaction"). M&B and Bominflot are designated hereinafter as the "parties to the proposed transaction".

(1) THE PARTIES

2. Marquard & Bahls's activities include (i) oil trading, (ii) tank-terminal storage, (iii) aviation fuel handling services, (iv) biogas production and related services, (v) operation of biomass fuelled power plants and wood pellets trading, (vi) quality control of automotive fuels, biogenous fuels, heating oils and advice on applications as well as (vii) supply and storage of natural gas.

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 Publication in the Official Journal of the European Union No C 57, 25.02.2012, p. 13.

3. Bominflot's activities include (i) physical supply of marine fuel oil to ships (physical bunkering), (ii) bunker fuel trading and brokering, (iii) operation of tank farms and barges and other related activities such as renting out of storage facilities in Northern Germany, processing of slops in Hamburg and Bremerhaven and agency services in Las Palmas and Ceuta.

(2) THE OPERATION

4. The transaction consists of the acquisition by Marquard & Bahls of sole control over the material part of the marine fuel business, including complementary activities, of Bominflot by way of purchase of shares and assets. More precisely, Mabanaft will acquire:
 - via its four wholly-owned indirect subsidiaries Mabanaft Bunker, Mabanaft TH, Mabanaft TH and Mabanaft TB 100% of the limited partnership interest in Bomin Deutschland KG from Bominflot, 100% of the shares in Bomin Deutschland Management GmbH from TuT, RASMUS, TAVIRA and PAPARA and 100% of the shares in Bomin International Holding GmbH from Alt-Komplementärin.
 - Mabanaft TH, Mabanaft TK and Mabanaft TB will acquire by way of three individual asset deals Bominflot's tank farms in, respectively, Hamburg, Kiel and Bremerhaven.
5. It follows that the transaction constitutes a concentration within the meaning of Article 3 (1) (b) of the EU Merger Regulation.

(3) EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Marquard & Bahls: EUR 13 033 million; Bominflot: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Marquard & Bahls: EUR [...] million; Bominflot: EUR [...] million), but they do 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.

(4) COMPETITIVE ASSESSMENT

7. The proposed transaction concerns tank-terminal storage and wholesale of petroleum products. Both parties offer tank-terminal storage in Northern Germany. Marquard & Bahls (but not Bominflot) is also active in the wholesale of light petroleum products, which is a downstream market to tank-terminal storage.

A. Relevant product markets

Tank-terminal storage

8. Tank farms are used for the storage of liquids (petroleum products, bioethanol, and other liquids). The Parties submit that they can be used either for own purposes such as trading of petroleum products or bunkering, or to rent out capacities to third parties for storage purposes.

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

9. The Parties submit that within the category of petroleum products, a distinction has to be made between the storage of light petroleum products (such as naphtha, petroleum, petroleum components, diesel, gasoil, light heating oil and jet fuel) and dark petroleum products (such as heavy heating oil and marine fuel oil). The Parties submit that light and dark petroleum products cannot be stored in the same tank since due to the low viscosity of dark petroleum products, tanks require heating elements to keep their content liquid. In order to switch usage of a tank substantial investment is required.
10. In previous decisions, the Commission has considered that there are different markets for the storage of crude oil, petroleum, vegetable oils and chemicals and gas, owing to technical and commercial considerations⁴. Further, the Commission has previously considered a distinction between "dirty" or "black" mineral oil products (such as crude oil and fuel oil) and "clean" or "white" products (such as gasoline, diesel and naphtha) based on the shipping of these goods in barges on inland waterways⁵. The switch from "black" or "dirty" products, with regard to their transportation, would be possible only after extensive cleaning of the barge. Furthermore, the low viscosity of "black" products requires heating elements to keep the products liquid⁶. The Parties submit that the same considerations are true for the storage "light" (or "white") and "dark" (or "black") petroleum products and that they should therefore be regarded as distinct product markets. The Commission has previously considered that it appears justified to conclude that the relevant product market consists of the market for the storage of petroleum products⁷.
11. The Parties consider that the relevant product markets for tank-terminal storage comprises both independent providers of tank storage capacities and marketable capacities at refineries, for in specific cases closed refineries are transformed into tank storage facilities which can be relied on by customers in the same way as other independent storage facilities.
12. For the purposes of the case at hand, the precise product market definition can be left open since the proposed transaction will not lead to competition concerns under any of the potential product market definitions.

Wholesale of petroleum products

13. The Parties are active in oil trading and cargo trading. Oil trading encompasses international trading and wholesale of, among other products, heating oil, diesel fuel, petroleum, jet fuel and biofuels (all light petroleum products). Cargo trading consists of sales of marine fuel oil to traders and bunkering firms at a wholesale level.
14. As far as **oil trading** is concerned, the Commission has found in previous cases that unlike retail sale of motor fuels, the non-retail sale of fuels is not similarly aggregated. Different fuels are supplied for different uses to different types of customers. Customers of non-retail sales are wholesalers and high volume end customers, and the products are not substitutable in terms of demand⁸. The Commission has confirmed that there are distinct

⁴ Case IV/M.1621 – Pakhoed/Van Ommeren (II) and COMP/M.4532 –Lukoil/ConocoPhilips.

⁵ Case COMP/M.2597 – Vopak/Van der Sluijs.

⁶ Case COMP/M.2597 – Vopak/Van der Sluijs.

⁷ Case IV/M.1621 – Pakhoed/Van Ommeren (II), COMP/M.4545 – Statoil/Hydro; COMP/M.4532 – Lukoil/ConocoPhilips.

⁸ Case COMP/4532 – Lukoil/ConoccoPhilips.

markets for the non-retail supply of diesel and the non-retail supply of light heating oil⁹. The Parties state that these products are not substitutable in terms of demand. The Commission also found little supply side substitutability for different refined products as that would depend on adjustments at the refineries which in turn depend on many other parameters¹⁰.

15. As far as **cargo** trading is concerned, the Commission has regarded trading of marine fuel as a distinct product market due to their different applications in different types of engines and physical specifications such as viscosity, sulphur and metal content¹¹. Marine (bunker) fuel oils are used in marine engines which power marine vessels. They are also sold for consumption in marine type diesels used on-shore (e.g. for small scale power generation)¹².
16. For the purposes of the case at hand, the precise product market definition can be left open since the proposed transaction will not lead to competition concerns under any of the potential product market definitions.

B. Relevant geographic markets

17. In previous cases, the Commission has indicated that the market for the **storage of petroleum products**, at least with respect to the large storage facilities as those concerned by the proposed transaction, typically comprises certain coastal regions and potentially also the hinterland to which petroleum products are supplied. Thus, the Amsterdam-Rotterdam-Antwerp ("ARA") region was recognized as such coastal region¹³.
18. Based on previous Commission practice, the Parties submit that the relevant geographic market comprises the Northern German coastal region and its hinterland (delimited by Hamm in the South West and the German coast line and the Danish border in the North and comprising, *inter alia*, the cities of Kiel, Rostock, Hamburg, Bremen and Hannover). The market investigation has largely confirmed the appropriateness of considering the above market as relevant geographic market.
19. As far as the **wholesale of petroleum products** is concerned, the Commission has considered the markets for non-retail supply of diesel and the non-retail supply of light heating oil to be at least national in scope¹⁴. In earlier cases, the Commission has also considered narrower market definitions for motor fuels and domestic heating oil with regional markets centering around refineries or storage facilities¹⁵. Later it has also discussed an EEA-wide or even wider market definition for motor fuels¹⁶. The Parties submit that the wholesale markets for heating oil, diesel fuel, petroleum, jet fuel, marine fuels and biofuels are at least national in scope.
20. For the purposes of the present case, the precise market definition can however be left open, since the transaction does not raise any concerns under any possible market definition.

⁹ Case COMP/M.4545 – Statoil/Hydro.

¹⁰ Case COMP/M.1628 – TotalFina/Elf.

¹¹ Case COMP/M.5689 – Bominflot/SBI.

¹² Case COMP/M.5689 – Bominflot/SBI.

¹³ Case IV/M.1621 – Pakhoed/Van Ommeren II; COMP/M.4532 – Lukoil/ConoccoPhilips.

¹⁴ Case COMP/M.4545 – Statoil/Hydro. .

¹⁵ Case COMP/M.1628 – TotalFina/Elf.

¹⁶ Case COMP/M.4532 – Lukoil/ConoccoPhilips.

C. Competitive assessment

21. The proposed transaction leads to horizontally affected markets only in case of tank-terminal storage for light petroleum products in Northern Germany. Potentially, the proposed transaction would also lead to vertically affected markets on the German wholesale market for light petroleum products¹⁷.
22. The activities of the Parties in the area of **tank-terminal storage** overlap with regard to the storage of light petroleum products in Northern Germany. In this area, Marquard & Bahls operates tank-terminal storage facilities for light petroleum products in Hamburg, Hamm, and Hannover¹⁸. Bominflot operates tank-terminal storage facilities for light petroleum products in Hamburg, Kiel, and Bremerhaven.
23. In Germany, Marquard & Bahls has a tank-terminal storage capacity of [...] million cubic meters for light petroleum products and [...] cubic meters for dark petroleum products. About [...] % of Marquard & Bahls storage capacity is rented out, the remaining being used captively for the storage of both light and dark petroleum products.
24. Bominflot only operates three tank farms with a total gross volume of [...] cubic meters in Hamburg, Bremerhaven and Kiel. Bominflot stores both light and dark petroleum products in its tank farms. [...] cubic meters are rented out to third parties for the storage of gasoils (which are light petroleum products), organic oils and greases, paraffins, paraxylene, and fertilizers¹⁹. The remaining [...] cubic meters are used captively by Bominflot for the storage of light and dark petroleum products²⁰.
25. Both Marquard & Bahls and Bominflot rent storage on commercial terms and at market prices. As far as Marquard & Bahls is concerned, group companies are not given preferential treatment over third party demand and need to pay market prices for such services.
26. The Parties submit that for the purposes of this case, marketable capacities at refineries should also be taken into account, since in some cases closed refineries are transformed into tank storage facilities²¹. Moreover, according to the Parties, the tank storage market is exposed to fringe competition exerted by geographically closely located active refineries. The market investigation, however, has not fully corroborated the Parties' statement

¹⁷ This case does not give rise to affected market on the basis of alternative market definitions previously considered by the Commission.

¹⁸ Furthermore, Marquard & Bahls and Weser-Petrol Seehafentanklager GmbH & Co. KG, Bremen, operate a joint venture, Weser-Tanking Bremen ("Weser-Tanking"), which operates a storage facility for diesel and heating oil in Bremen and serves for storing these products as stock for the geographical area of the German North Sea Coast. Weser-Tanking uses [...] % of its storage capacity for compulsory storage for [...], under a contract that was recently renewed and will expire in [...].

¹⁹ As from 1 January 2012, in Bremerhaven, out of the gross gasoil capacity of [...] cubic metres, [...] cubic meters are rented out to [...], [...] cubic metres are rented out to [...], and [...] cubic metres are rented out on an evergreen yearly contract to [...] (Bominflot confidential). In Kiel, out of the gross gasoil capacity of [...] cubic metres, [...] cubic meters are rented out to [...] until [...] and [...] cubic meters are rented out to [...] on an evergreen yearly contract.

²⁰ Bominflot uses [...] cubic meters of the total gross volume captively for the storage of light petroleum products for its own purposes, [...] cubic meters for the storage of dark petroleum products for its own purposes, and [...] cubic meters for the storage of slops, oil-water mixtures and recovered fuel.

²¹ In January 2012, Shell announced the intention to convert by 2013 part of its Hamburg-Harburg refinery into an oil products storage and handling terminal, representing a processing capacity of 108 000 barrels per day.

according to which refineries to be closed and to be transformed into tank storage facilities should be considered as part of the relevant product market.

27. The Parties combined market share on the North German tank-terminal storage market for light petroleum products would be approx. [25-35]%. This figure excludes future capacities at decommissioned refineries – if these were to be included, the combined market shares would be [20-30]% in Northern Germany. The transaction would lead to a small increment of [0-5]% ([0-5]% if the refineries were to be included). In Northern Germany, the Parties face competition from Tanquid ([20-30]%), Hestya ([10-20]%), Shell ([10-20]%), Royal Vopak ([10-20]%), Petrotank ([5-10]%) and Grosstanklager-Ölhafen Rostock ([5-10]%) (including refineries). On the Northern German market, only about [...]% of Marquard & Bahls' storage is rented out to M&B group companies active on the wholesale market. Similarly, the 'Herfindahl-Hirschman Index' ("HHI") for this market increases only marginally from 1,380 to 1,442 (or from 1,900 to 2,012 if one disregards storage capacities at closed refineries), remaining at a low level.
28. In view of the above, the Commission concludes that the proposed transaction does not raise competition concerns with regard to the market for tank-terminal storage for light petroleum products.
29. Regarding the potential **vertically affected markets**, Marquard & Bahls (not Bominflot) is active on the wholesale market for light petroleum products which can be considered as a downstream market in relation to tank-terminal storage, with wholesalers potentially renting storage capacities. Marquard & Bahls' position on the German wholesale market for light petroleum market does not exceed [5-10]%. In the case of Northern Germany, M&B's market share would not exceed [0-5]%. As discussed above, M&B's position on the tank-terminal storage market for light petroleum products in Northern Germany will be affected by the Transaction only marginally. In view of the above, the Commission considers that the transaction would not lead to foreclosure concerns.
30. The Commission therefore concludes that the concentration does not give rise to serious doubts as to its compatibility with the internal market in relation to tank-terminal storage and the wholesale market for light petroleum products.

(5) CONCLUSION

31. 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*