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***Case No COMP/M.6697 - O.W. BUNKER/ BERGEN
BUNKERS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/12/2012

***In electronic form on the EUR-Lex website under
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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 11.12.2012

C(2012) 9611

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6697 – O.W. Bunker / Bergen Bunkers
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 8 November 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which the undertaking O.W. Bunker & Trading A/S ("O.W. Bunker", Denmark), controlled by the private equity firm Altor Fund II ("Altor", Jersey), acquires within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Bergen Bunkers AS ("Bergen Bunkers", Norway) by way of purchase of shares.² O.W. Bunker and Bergen Bunkers are hereinafter referred to as "the Parties" and O.W. Bunker is referred to as "the Notifying Party".

(1) THE PARTIES

2. **O.W. Bunker** is primarily active in the physical supply and trading of marine (bunker) fuel and lubricants as well as logistic services on a worldwide basis (physical distribution of marine fuel, i.e. oil and gas, storage, blending and bunkering deliveries to vessel operators, industry and power plants). O.W. Bunker supplies marine fuel in ports where it is present while in other ports a local supplier performs the delivery service on its behalf.

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 353, 17.11.2012, p. 5.

3. **Bergen Bunkers** is an international trading and brokering company trading in bunkers and lubricants to vessels worldwide. Bergen Bunkers deals with all grades of marine fuels and lubricants. The company is based in Bergen, Norway, but trades in ports in various countries.

(2) THE OPERATION

4. On 15 October 2012, the Parties entered into a Share Sale and Purchase Agreement by which O.W. Bunker will acquire 100% of the issued and outstanding share capital in Bergen Bunkers and thus sole control over Bergen Bunkers.
5. Therefore, the proposed 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 (Altor: EUR [...] million; Bergen Bunkers: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Altor: EUR [...] million; Bergen Bunkers: 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 the supply of bunker fuels. O.W. Bunker operates both as a physical supplier and as a bunker trader. The Physical Supply business unit of O.W. Bunker supplies bunker fuels directly to vessel owners, trading offices of O.W. Bunker as well as competing bunker traders (including Bergen Bunkers). Bergen Bunkers operates only as a bunker trader (and broker) and not as a physical supplier.⁴

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

⁴ Both parties are also involved in the sales of lubricants, albeit to a limited extent. As this overlap does not result in any affected market under any plausible definition, this product is not discussed in this decision.

A. Relevant product market

Physical supply of bunker fuel and bunker trading

8. Marine (bunker) fuels are used in marine engines which power marine vessels.⁵ They are residual heavy fuels constituting bottom draw from the refinery, remaining 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 worldwide and are classified in different viscosities; they are bought and sold mostly (approximately 80%) on a spot basis. The Commission has previously considered the sale of bunker fuels as a market separate from other residual (industrial) fuels.⁶
9. In a previous case, the Commission considered a distinction between bunker fuel supplied to end users (i.e. at retail level), and bunker fuel supplied to traders and bunkering firms at the wholesale level ("cargo trading"). The Commission also considered a possible alternative definition of the market for the sale of bunker fuels distinguishing between (i) the physical supply of bunker fuels; and (ii) bunker trading, though the exact market definition was ultimately left open.⁷
10. The Notifying Party submits that the retail supply of bunker fuel is the supply to end customers (ship owners) by traders, brokers or physical suppliers. With regard to cargo trading, the Notifying Party draws a distinction between "cargo trading", which it submits as the supply of bunker fuel to physical suppliers⁸ not to traders,⁹ and only concerns the sale and transport of a full cargo of a ship on the one hand; and the wholesale supply of bunker fuel on the other. The Notifying Party also submits that the physical supply and the trading of bunker fuels belong to the same relevant product market since they compete strongly for the same customers.

⁵ Case M.5689 *Bominflot/SBI Holding*.

⁶ Case M.6261 – *North Sea Group/Argos Groep/JV*, and Case M.5689 - *Bominflot/SBI Holding*.

⁷ Case M.5689 – *Bominflot/SBI Holding*.

⁸ It argues that according to standard industry terminology cargo trading is where a company such as O.W Bunker buys fuel from a supplier (typically an oil major) in a given port, and then transports the product to another port where it is resold to the physical suppliers in that port. In other words, O.W. Bunker acts as a supplier to the physical suppliers and does not supply the bunker fuel to shipping lines, or traders.

⁹ The Notifying Party argues that bunker traders are not connected to the "cargo trading" market and maintains that bunker traders invariably buy their bunker fuels from a physical supplier, or, in some instances, from another trader (which in turn purchases the bunker from a physical supplier), without the bunker physically moving.

11. The majority of customers who replied to the Commission's requests for information in this case indicated that they purchase bunker fuels from both physical suppliers and bunker trading companies.¹⁰ In addition, the majority of customers did not differentiate between services provided by physical bunker suppliers and bunker traders.¹¹ With regard to cargo trading, a majority of respondents to the Commission's requests for information agreed with the Commission's definition of cargo trading in *Bomiflot/SBI Holding*¹² as being the wholesale physical supply of bunker fuel to non-end customers. A number of respondents also indicated that cargo trading includes the supply of bunker fuel to physical suppliers of bunker fuels, and is linked to the sale and transport of part or a full cargo of a ship.¹³
12. For the purposes of this decision, the exact product market definition can be left open since the transaction does not raise competition concerns under any plausible alternative market definition.

B. Relevant geographic markets

13. In previous cases, the Commission has indicated that the market for the sale of residual fuels, including bunker fuels and industrial fuels, is at least national in scope¹⁴.
14. The Notifying Party submits that it competes in a global market and argues that customers may choose between several ports for bunkering, and as a result bunker prices in ports constrain each other far beyond national borders. Moreover, the Notifying Party submits that bunker traders located anywhere in the world may trade in the supply of bunker fuel anywhere in the world and physical suppliers have vessels placed at several points allowing ship owners to take on bunkers en route, i.e. outside ports.
15. Third parties who replied to the Commission's requests for information indicated that a vast majority of customers source bunker fuels worldwide,¹⁵ and can choose between

¹⁰ Replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012.

¹¹ Replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to question 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

¹² Case M.5689 – *Bominflot/SBI Holding*

¹³ Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

¹⁴ Case IV/M.1301 – *Texaco/Chevron*, Case M.5689 - *Bominflot/SBI Holding*, Case M.2208 - *B1500 Chevron/Texaco*.

¹⁵ Replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to question 10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

different ports for sourcing bunker fuels.¹⁶ In addition, most respondents agreed with the Notifying Party's submission that bunker trading companies may trade all over the world for the supply of bunker fuels.¹⁷ Nevertheless, most of these respondents also pointed to the existence of price differences in the supply of bunker fuels between EU Member States.¹⁸ In addition, the market investigation showed that most suppliers deliver bunker fuel solely to countries in which their barges are located, with the exception of the Amsterdam-Rotterdam-Antwerp (ARA) region¹⁹, pointing to the existence of national markets, if not wider than national (regional). The national character of the geographic markets also appears to be reinforced by the fact that transport costs limit suppliers' ability to supply bunker fuels to any geographic area.²⁰

16. In any event, for the purpose of this decision, the exact geographic market definition can be left open since the transaction does not raise competition concerns even on the narrowest plausible definition.

C. Competitive Assessment

Horizontal overlaps

17. The proposed transaction leads to a horizontally affected market in the retail supply of bunker fuel.²¹
18. On the overall market for the retail supply of bunker fuel (i.e. physical supply and bunker trading) the proposed transaction leads to affected markets in Belgium, Denmark and Germany. The Parties' combined market shares will be [30-40]% in Denmark (with an increment of [5-10]%), The Parties' largest competitors in Denmark are Stena Oil (approximately [10-20]%), Topoil (approximately [10-20]%), Bunker Holding (approximately [10-20]%), World Fuel Services (approximately [5-10]%) and Malik Supply (approximately [0-5]%) and there are a number of other smaller competitors with shares in the region of [0-5]%.²²

¹⁶ Replies to question 10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012.

¹⁷ Replies to question 16 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

¹⁸ Replies to question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to question 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

¹⁹ Replies to question 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

²⁰ Replies to question 13 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

²¹ On the wholesale level, only O.W. Bunker is active and thus there is no overlap between the Parties' activities. Bergen Bunkers also acts as a broker whereas O.W. Bunker does not.

²² According to the Notifying Party, there are also a number of other smaller competitors in Denmark, with market shares ranging from [0-5]%. These include Hanwa Co. Ltd., Tokyo, A/S Dan-Bunkering Ltd., Alpha Trading SpA (Genova), LG International Corp. (Seoul), OceanConnect Marine Pte Ltd., Chemoil

19. The Parties combined share in Germany will be [10-20]% (with an increment of [0-5]%) and [10-20]% in Belgium. In each of the aforementioned Member States, the increment resulting from the proposed transaction is limited at less than [0-5]% meaning that the proposed transaction will not bring about a significant change in the market structure. In addition, the merged entity's market share will remain below [20-30]% and therefore not of a level to raise concerns given the presence of other competitors.
20. If bunker trading and physical supply are not considered to form part of the same product market, the proposed transaction leads to affected markets only in the segment of the trading of bunker fuels at national level in Malta, Denmark, Germany, Norway, Netherlands, and Greece.

Table 1: Market Shares for Bunker Trading - 2011

<u>Country</u>	<u>OW Bunker</u>	<u>Bergen Bunkers</u>	<u>Combined</u>
Malta	[30-40]% ²³	[0-5]%	[30-40]%
Denmark	[10-20]%	[10-20]%	[20-30]%
Germany	[10-20]%	[0-5]%	[10-20]%
Greece	[10-20]%	[0-5]%	[10-20]%
Norway	[0-5]%	[10-20]%	[10-20]%
The Netherlands	[10-20]%	[0-5]%	[10-20]%

Source: Notifying Party

21. As shown in the table above, the merged entity will have a share of [10-20]% in Greece and [10-20]% in Norway with a minimal increment in both countries so the market structures will not change as a result of the proposed transaction. In Malta, the Parties' combined market share will amount to [30-40]%. However the increment is only [0-5]% and there are two other strong competitors namely World Fuel Services ([10-20]%), Bunker Holding ([10-20]%) and as well as a number of other smaller competitors.
22. The merged entity will have a share of [10-20]% in Germany and [10-20]% in the Netherlands with an increment of [0-5]% in both countries. Again, World Fuel Services ([10-20]%) and Bunker Holding ([10-20]%) are present in both countries along with a number of other smaller competitors.

International Pte Ltd, Petro-Ocean Trading Co., Ltd., E-Bunker Trade Co. Ltd, Sea Trader International Ltd, Omega Bunker SrL, Alpha Trading SAM (Monaco), Bunkers International Corp., Bomin Bunker Oil Ltd, Scandinavian Bunkering, GLOBal Bunkering Ltd, OceanConnect Marine UK Ltd., Italmar Consignaciones S.A., Ocean Energy Ltd., North Sea Bunker GmbH, Island Oil Limited, Brilliant Maritime Serv. Ltd, Termoil S.A., Monjasa Inc, GAC Bunker Fuels (UAE) Limited, Isobunkers L.L.C., Global Yacht Fuel, Inc., Lidmar Shipping and Trading Company LTD, Sea Bunkers Inc.

²³ OW Bunker has does not physically supply bunker fuel in Malta.

23. In Denmark the Parties combined market share is [20-30]% in Denmark (with an increment of [10-20]%). However Bunker Holding, with a market share of [20-30]% is the market leader and World Fuel Services is also a strong market player with [10-20]%. In addition, there are a number of other smaller competitors making up 33% of the market.
24. Most customers who replied to the Commission's request for information indicated that there are sufficient alternative suppliers to the merged entity both in the trade and physical supply of bunker fuels.²⁴ Moreover, a vast majority of customers indicated that they have the ability to easily switch between suppliers and in fact have done so.²⁵ Respondents also indicated that customer choice is mainly based on price, product quality and service, and that there is sufficient competition in the market.
25. Given the Parties' modest combined market shares and the existence of sufficient alternative suppliers on the market, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the supply of bunker fuels in any possible sub-segments.

Vertical relationships

26. O.W. Bunker is active in the wholesale supply of bunker fuels which could be considered upstream to the physical supply of bunker fuel and bunker trading.
27. Under the narrowest plausible definition²⁶ (which includes the sale of bunker fuel by physical suppliers to other physical suppliers and to bunker traders, as well as the sale by traders to other bunker traders); the proposed transaction would give rise to only one affected market in Denmark where O.W. Bunker's market share would be [30-40]% on the upstream wholesale market. However, there are other strong competitors in the market, namely Stena Oil, with a share of approximately [30-40] %, Topoil ([20-30]%) and Malik Supply (5-10%) as well other smaller competitors. Furthermore, O.W. Bunkers' market share has been decreasing considerably in recent years.²⁷
28. On the downstream market, in the overall supply of bunker fuels (physical supply and trading), the Parties' combined share in Denmark would be [30-40]% with a number of other competitors including Stena Oil ([10-20]%), Bunker Holding ([10-20]%), TopOil

²⁴ Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012.

²⁵ Replies to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to question 19 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

²⁶ There are other scenarios which are not covered by this definition and which would widen the market including: (i) a refinery/oil major sells bunker fuel to a physical supplier - since neither O.W. Bunker nor Bergen Bunkers engage in that activity and bunker traders are not a party to this type of transaction; and (ii) a cargo trader sells bunker to physical suppliers - O.W. Bunker has some very limited cargo trading activity, whereas Bergen Bunker as a bunker trader is not a party to this type of transaction. These transactions are thus not part of the market share calculations, but if they were, the shares of O.W. Bunker would be significantly lower.

²⁷ O.W. Bunker had a considerably higher market share in Denmark in 2009 amounting to [60-70] %.

([10-20]%), World Fuel Services ([5-10]%), and Malik Supply ([0-5]%) as well as other smaller competitors. If the physical supply of bunker fuels and bunker trading are considered to be in separate markets, O.W. Bunker's market share in Denmark in the physical supply of bunker fuels would be [30-40]% (Bergen Bunkers is not active in physical supply).

29. The majority of respondents to the Commission's market investigation acting as physical suppliers to the Parties considered that if O.W. Bunker or Bergen Bunkers stopped buying bunker fuels from them, they would be able to find alternative customers.²⁸ Similarly, all competitors who replied to the Commission's market investigation who are currently purchasing bunker fuels from O.W. Bunker considered that if O.W. Bunker were to stop supplying them with bunker fuels, they would be able to find alternative suppliers of bunker fuels.²⁹ During the market investigation, the vast majority of customers and most competitors considered the proposed transaction unlikely to lead to competition concerns under any plausible market definition.³⁰
30. Given that the Parties' market shares in the downstream and upstream markets are moderate and there are a number of alternative suppliers with significant market shares at both levels, the merged entity will not have the incentive or the ability to foreclose the supply of bunker fuel acting either as a physical supplier or as a trader of bunker fuels. Similarly, the merged entity is unlikely to have the ability or incentive to engage in customer foreclosure as the market investigation has shown that there is strong alternative customer base.
31. Therefore the Commission considers that the proposed transaction does not raise foreclosure concerns in relation to the wholesale supply of bunker fuels.
32. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to any of the relevant markets.

²⁸ Replies to question 27 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

²⁹ Replies to question 29 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

³⁰ Replies to questions 20, 21 and 22 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Customers, dated 12 November 2012; and replies to questions 30, 31, 32 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to O.W. Bunker's Competitors, dated 13 November 2012.

(5) CONCLUSION

33. 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