EN

Case No COMP/M.7161 - DCC ENERGY/ QSTAR FÖRSÄLJNING/ QSTAR/ CARD NETWORK SOLUTIONS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 24/04/2014

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7161 – DCC ENERGY/ QSTAR FÖRSÄLJNING/ QSTAR/ CARD NETWORK SOLUTIONS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

(1) On 20 March 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking DCC Energy Limited ('DCC Energy', of Ireland), ultimately controlled by DCC plc ('DCC', of Ireland), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Qstar Försäljning AB ('Qstar'), Card Network Solutions Europe AB ('Card') and Qstar AB (all of Sweden, together referred to as the 'Target Companies'), by way of purchase of shares.[2] (DCC and the Target Companies will hereafter be together referred to as the 'Parties'.)

1. THE PARTIES

(2) DCC is a publicly listed company that acts as a sales, marketing, distribution and business support services group, headquartered in Dublin. DCC operates across five

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 89, 28.03.2014, p. 52.

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divisions: DCC Energy, DCC SerCom (IT and entertainment products), DCC Healthcare, DCC Environmental and DCC Food and Beverage.

(3) DCC Energy is principally active in the oil, LPG and fuel cards related markets in a number of European countries. In Sweden it is active in the oil and LPG related markets, through its subsidiaries Swea Energi Holding AB and Flogas Sverige AB.

(4) Qstar is principally active in the sale of motor fuels (mainly gasoline, diesel and ethanol) to and from retail service stations in Sweden. The sales of motor fuels are made through a number of retail stations that it owns and operates under the Qstar brand.

(5) Qstar AB is principally active in the wholesale (non-retail) distribution of heating oil, diesel, alkylate gasoline, wood-pellets and lubricants in Sweden.

(6) Card is a software company providing business and payment systems for the gasoline and fuel industry. Their software "Allkort" offers technology for payment terminals.

2. THE OPERATION AND THE CONCENTRATION

(7) The proposed transaction involves the indirect acquisition of sole control by DCC over Qstar, Qstar AB and Card, through purchase of the entire issued share capital of each of the latter companies (the 'Proposed Concentration'). The acquisition of the Target Companies will be executed through the closing of three separate share purchase agreements, which together form a single concentration. All three share purchase agreements were signed on the same date and their respective closings are de jure conditional upon each other. [3] The mutual interdependence of the three legal transactions shows that the economic aim pursued via the proposed concentration is for DCC to acquire sole control over all three companies (Qstar, Qstar AB and Card). It is therefore appropriate to treat the three transactions as a single concentration.[4]

3. EU DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (DCC: EUR 11 025 million; Qstar AB/Qstar: EUR […]; Card: EUR […]).

(9) Regarding the question whether the condition of Article 1(2)(b) of the Merger Regulation is fulfilled, it can first be noted that DCC has an EU-wide turnover in excess of EUR 250 million (namely EUR […]). As to the other undertakings concerned, for purposes of calculation of turnover, the respective aggregate EU-wide turnovers of Qstar AB and Qstar should be combined, in accordance with Article 5(2) of the Merger Regulation. The sale of both aforementioned companies is namely part of a single concentration, simultaneously occurring between the same seller and

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3 Article 5.2 of each of the respective share purchase agreements.

4 See recital 20 to the Merger Regulation and the Commission Consolidated Jurisdictional Notice ("CJN") (OJ C95, 16.04.2008, p1), in particular paragraphs 36 and following.

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

purchaser.[6] Qstar AB/Qstar combined have an aggregate EU-wide turnover of EUR […]. Neither DCC nor Qstar AB/Qstar achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.[7] The notified operation therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

(10) All of the Parties' overlapping activities are limited to the territory of Sweden and these give rise to three affected markets, involving the non-retail supply of diesel (horizontal overlap, first affected market)[8] and the supply of liquid petroleum gas ('LPG', horizontal overlap, second affected market[9] and vertical overlap; third affected market).[10] The remaining overlapping activities that do not give rise to affected markets involve: (i) the non-retail supply of heating oil; (ii) the non-retail supply of gasoline; (iii) the retail supply of motor fuels; (iv) the retail supply of heating oil; (v) the supply of fuel cards[11]; (vi) the supply of (industrial and automotive) lubricants; and (vii) the distribution of wood-pellets.

4.1. Relevant product markets

(11) As regards the supply of refined oil products, the Parties submit that there is one single product market with no further distinction either between non-retail and retail sales or by type of oil product. Insofar as relevant to this matter, the Commission has however previously defined separate relevant product markets for the (i) non-retail supply of diesel, (ii) non-retail supply of LPG, and (iii) retail supply of motor fuels (encompassing diesel, gasoline and LPG). 'Non-retail' in that regard should be understood as encompassing both wholesale sales made to independent resellers that are not integrated upstream as well as retail sales made to large industrial and commercial customers (such as e.g. hospitals, factories, etc.).[12]

(12) The Parties also submit that an overall product market for the non-retail supply of mineral oil products exists, which comprises the (wholesale) distribution of heating oil, diesel as well as gasoline. The Commission has however previously considered

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6 As regards the identity of the seller, it should be noted that both Qstar AB as well as Qstar are currently (ultimately) solely controlled by the individual Claes Bergström, a Swedish national. The fact that 35% of the share capital of Qstar is currently owned by a third party (Svenska Oljebolaget Holding AB) which is not associated with Mr Bergström does not preclude the finding of sole control on the part of the latter, given that major strategic decisions (such as those relating to the budget as well as the annual business plan) are ultimately decided by simple majority of the shareholders' meeting, at which level Mr Bergström holds a majority.

7 DCC achieves more than two-thirds of its aggregate EU-wide turnover in the United Kingdom whereas Qstar/Qstar AB achieves more than two-thirds of its aggregate EU-wide turnover in Sweden.

8 Analysed in 4.3.1 below.

9 Analysed in 4.3.2 below.

10 Analysed in 4.3.3 below.

11 It is important to note that the Parties' fuel card-related activities do not overlap within Sweden. Only if the relevant geographic market was taken to be EEA-wide in scope could this activity, theoretically, be considered to show an overlap, in which case the Parties' combined market share would however remain below 1%.

12 COMP/M.3291 *Preem/Skandinaviska Raffinaderi* (2003); COMP/M.3375 *Statoil / SDS* (2004); COMP/M.3543 *PKN Orlen / Unipetrol* (2005); COMP/M.3516 *Repsol / Shell Portugal*; COMP/M.4208 *Petroplus / European Petroleum Holdings* (2006); COMP/M.4545 *Statoil / Hydro* (2007); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008); COMP/M.5169 *Galp Energia Espana / Agip Espana* (2008).

that different "non-retail" fuels are supplied for different uses to different types of customers. Indeed, the Commission has previously stated that the non-retail sale of each refined fuel product constitutes a distinct relevant product market.[13] Indeed, these products are not substitutable in terms of demand. Exceptionally, in *M.3375 Statoil / SDS (2004)*, the Commission did consider that diesel and gasoline belong to the same product market in view of the existing supply-side substitutability.

(13) With respect to LPG, the Parties believe that within the market for the non-retail supply of LPG, separate relevant product markets exist for the supply of LPG in bulk and in bottles. In that regard, the Parties indicate that the products require different distribution infrastructures as well as different licensing and that no demand-side substitution exists between said categories due to different customer requirements. The Commission has previously also considered a sub-segmentation into LPG sold in bottles and LPG sold in bulk, finally leaving this question open.[14]

(14) In line with the Commission's previous decision-making practice, the Parties believe that the retail supply of motor fuels constitutes a separate relevant product market which should not be further sub-segmented by type of fuel product, given the existence of supply-side substitutability. Exceptionally, the Commission has however considered – without taking a final position – whether within the latter market a separate relevant market for automotive LPG exists.[15]

(15) In any event, the precise definition of all aforementioned relevant product markets can be left open, as the proposed concentration does not raise serious doubts as to its compatibility with the internal market under any plausible alternative market definition.

4.2. Relevant geographic markets

(16) The Parties submit that all the aforementioned (possible) relevant product markets are national in scope, which coincides with the Commission's view entailing that these markets encompass (at least) the entire Swedish territory.[16]

(17) In any event, the precise definition of the geographic scope of the relevant markets can be left open, as the proposed concentration does not raise serious doubts as to its compatibility with the internal market under any plausible alternative scope.

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13 COMP/M.3291 *Preem/Skandinaviska Raffinaderi* (2003); COMP/M.3375 *Statoil / SDS* (2004); COMP/M.3543 *PKN Orlen / Unipetrol* (2005); COMP/M.3516 *Repsol / Shell Portugal*; COMP/M.4208 *Petroplus / European Petroleum Holdings* (2006); COMP/M.4545 *Statoil / Hydro* (2007); COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008); COMP/M.5169 *Galp Energia Espana / Agip Espana* (2008).

14 Only in case COMP/M.5005 *Galp Energia/ExxonMobil Iberia* (2008), the Commission finally decided that Bulk LPG and Bottled LPG belong to separate relevant product markets. In other cases, this possibility was left open: COMP/M.5637 *Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings* (2010); COMP/M.3664 *Repsol Butano / Shell Gass (LPG)* (2005); M.3375 *Statoil / SDS* (2004).

15 COMP/M.5005 *Galp Energia / Exxonmobil Iberia* (2008).

16 COMP/M.3291 *Preem/Skandinaviska Raffinaderi* (2003); COMP/M.3375 *Statoil/SDS* (2004); COMP/M.3730 *Lukoil / Teboil / Suomen Petrooli* (2005); COMP/M.4532 *Lukoil / ConocoPhillips* (2007); M.4919 *Statoilhydro / Conocophillips* (2008).

4.3. Competitive assessment

4.3.1. Non-retail supply of diesel

(18) Although the Parties' combined post-merger share of the possible market for the non-retail supply of diesel in Sweden of [20-30]% […] exceeds 20%, the increment resulting from the proposed concentration is highly limited,[17] as the Target Companies' combined share of this market only amounts to [0-5]% - with DCC having a share of [10-20]%. Moreover, several strong, vertically integrated competitors will continue to exert significant competitive pressure on the merged entity such as Preem AB ([40-50]% market share), OK/Q8 ([10-20]% market share), and Statoil ([5-10]% market share).

(19) In light of the foregoing, this horizontal overlap does not raise serious doubts as to its compatibility with the internal market.

4.3.2. Non-retail sale of LPG

(20) The Proposed Concentration gives rise to one further, possible horizontal overlap on the overall market for the non-retail sale of LPG in Sweden,[18] on which market the merged entity would hold a share of around [40-50]%. The increment resulting from the proposed concentration will however be limited,[19] given that the Target Companies' LPG sales account for less than [0-5]% of the overall market – with DCC currently having a [40-50]% share. Finally, several important competitors will continue to, post-merger, exert significant competitive pressure on the merged entity. Such competitors include: (i) E.ON ([10-20]% market share), (ii) Kosan ([10-20]% market share), (iii) Neste ([10-20]% market share), and (iv) Preem ([5-10]% market share).

(21) This overlap therefore equally does not raise serious doubts as to its compatibility with the internal market.

4.3.3. Non-retail sales of LPG – retail sales of automotive LPG

(22) The Proposed Concentration also gives rise to a vertically affected market due to DCC's (upstream) activities in the non-retail sale of LPG and the Target Companies' (downstream) activities in the retail sale of automotive LPG.

(23) DCC is however unlikely to have the ability to, post-merger, engage in any form of input foreclosure. Given that it currently holds a market share of [40-50]% of the upstream market, customers could, in the event of an attempted foreclosure, switch to a number of significant upstream competitors of DCC, such as: (i) E.ON ([10-20]% market share); (ii) Kosan ([10-20]% market share); (iii) Neste ([10-20]% market share); and (iv) Preem ([5-10]% market share). Moreover, 4 of the 5 most important automotive LPG retail stations (those that also serve other types of automotive fuel products, rather than mere warehouses selling bottled LPG) are vertically integrated with third-party oil majors (Preem and OK/Q8).

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17 The relevant HHI delta will remain below 150.

18 Under the narrowest possible market definition no overlap exists, as DCC is only active in the non-retail supply of bulk LPG, while the Target Companies' activity is confined to bottled LPG.

19 The relevant HHI delta will remain below 100.

(24) In addition, the merged entity will in any case not have an incentive to foreclose access to inputs. Currently, only 2 out of at least 33 retail stations that sell automotive LPG[20] in Sweden are supplied by DCC. Also, the Target Companies' position in the downstream retail market is highly limited, accounting for (at most) a [5-10]% market share (2 out of 33 retail stations[21]) and generating an annual turnover of less than EUR […]. Therefore, the basis on which additional profits could theoretically be earned is highly limited.

(25) Furthermore, the merged entity will neither have the ability nor incentive to enter into customer foreclosure. As already mentioned, the Target Companies' importance in the downstream market for the retail sale of automotive LPG is highly limited given that they only operate 2 out of 33 retail stations selling automotive LPG, which furthermore generate a highly limited turnover.[22] Accordingly, the merged entity will be unable to affect the ability of DCC's upstream competitors to effectively compete by engaging in customer foreclosure.

(26) In light of all of the foregoing, it appears that the merged entity will neither have the ability nor incentive to engage in either input or customer foreclosure in relation to the Swedish LPG markets. Therefore, the transaction does not raise serious doubts as to its compatibility with the internal market as a result of this vertical link.

5. CONCLUSION

(27) 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 the Merger Regulation.

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President

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20 The Parties submitted that the LPG market is very fragmented and limited in Sweden, inter alia due to unfavourable tax treatment, and therefore information on the exact size is difficult to obtain or estimate.

21 The Target Companies are currently supplied by […].

22 The Parties explain that the Target Companies' annual LPG procurement amounted to around […] tons per annum (in 2013), whereas the overall Swedish market for the supply of bulk LPG covered 342 000 tons (in 2012).