



EUROPEAN COMMISSION
DG Competition

Case M.8601 - GREENERGY / INVER

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/10/2017

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Brussels, 13.10.2017
C(2017) 7017 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Notifying Party

**Subject: Case M.8601 – GREENERGY / INVER
Commission decision pursuant to Article 6(1)(b) of Council
Regulation No 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²**

Dear Sir or Madam,

- (1) On 19 September 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Greenergy International Limited ("Greenergy" or the "Notifying Party", the UK), ultimately controlled by Brookfield Asset Management Inc. ("Brookfield", Canada) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Inver Energy Limited ("Inver", Ireland) by way of a purchase of shares (hereafter the "Transaction").³ Greenergy and Inver are designated hereinafter as the "Parties" to the Transaction.

1. THE PARTIES

- (2) Greenergy is active in the importation, storage, blending and transportation of refined oil fuels to wholesale customers in the UK and is the UK's largest supplier

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ OJ C 329, 30.9.2017, p. 13–13

of road fuels. It also produces and blends biofuels. Greenergy is ultimately controlled by Brookfield, a global asset manager.⁴

- (3) Inver is an independent importer and distributor of a range of fuel products predominantly in Ireland where it also operates a number of retail service stations. In the UK, Inver operates a fuel importation terminal at Cardiff, from where it supplies fuel oil, gasoil and kerosene.

2. THE OPERATION

- (4) The Transaction involves the acquisition by Greenergy of the entire share capital of Inver pursuant to a share purchase agreement dated 13 July 2017. Therefore, post-transaction, Greenergy will exercise sole control over Inver within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million.⁵ Each of them has an EU-wide turnover in excess of EUR 250 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 within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Non-retail supply of refined oil products

4.1.1. Product market definition

4.1.1.1. The Notifying Party's view

- (6) The Notifying Party does not contest the Commission's decisional practice described in section 4.1.1.2 and submits that "*in light of the lack of substantive overlap between the parties' activities [...] it is not necessary for the Commission to reach a firm conclusion in relation to product market definitions in this case*".⁶

4.1.1.2. The Commission's assessment

- (7) The Commission has previously consistently distinguished the retail and non-retail sale of refined oil products, the latter encompassing the supply to independent resellers or retailers not integrated upstream, as well as to large industrial and commercial consumers by secondary means of transport.

⁴ Other than its interest in Greenergy, Brookfield is not active on any of the markets considered in this notification.

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

⁶ Paragraph 6.20 of the Form CO.

- (8) In previous decisions, the Commission concluded that the non-retail sale of each of the products - gasoline, diesel, domestic heating oil (either gas oil/light fuel oil or kerosene), heavy fuel oil and LPG - constitutes a distinct product market.⁷
- (9) The Commission has also considered the further segmentation of the non-retail diesel market into road and non-road sub-segments but ultimately left this question open.⁸ Conversely, the Commission found that the distinction of bio fuels and non-bio fuels is not appropriate.⁹
- (10) The above product market definition is retained for the present case.

4.1.2. Geographic market definition

4.1.2.1. The Notifying Party's view

- (11) The Notifying Party considers that the market for non-retail supply of refined oil products is not wider than national in scope but submits that the precise geographic market definition can be left open in the present case.

4.1.2.2. The Commission's assessment

- (12) The Commission has previously considered these non-retail markets to be national in scope. This geographic market definition is retained in the present case.

4.2. Storage of petroleum products

4.2.1. Product market definition

4.2.1.1. The Notifying Party's view

- (13) The Notifying Party does not contest the Commission's decisional practice defining a separate product market for the leasing of storage capacity for petroleum products to third parties and submits that it is not necessary for the Commission to reach a firm view on the market definition.

4.2.1.2. The Commission's assessment

- (14) The storage of petroleum products available to third parties has been previously defined by the Commission as a distinct product market,¹⁰ separate from relevant product markets for the storage of crude oil, vegetable oils, chemicals and gas,

⁷ See cases COMP/M.3291 Preem / Skandinaviska Raffinader (2003); COMP/M.3375 Statoil / SDS (2004); COMP/M.3543 PKN Orlen / Unipetrol (2005); 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 Enrgia Espana / Agip Espana (2008).

⁸ See case COMP/M.6935 Argos / Sopetral (2014).

⁹ See case COMP/M.6286 Südzucker / ED&F Man (2012).

¹⁰ See cases COMP/M.6935 Argos / Sopetral (2014); COMP/M.6261 North Sea Group / Argos Groep / JV (2011); COMP/M.4532 Lukoil / ConocoPhillips (2007), COMP/M.1621 Pakhoed / Van Ommeren (1999).

due to technical and commercial considerations.¹¹ This product market definition is retained for the present case.

4.2.2. *Geographic market definition*

4.2.2.1. The Notifying Party's view

- (15) The Notifying Party does not contest the Commission's decisional practice described in section 4.2.2.2.

4.2.2.2. The Commission's assessment

- (16) In previous decisions the Commission found that the geographic scope of the market of storage of petroleum products depends on the size of the Member State at hand and is accordingly national, regional or limited to a radius that in average does not exceed 150 kilometres around the relevant storage depot.¹²
- (17) The Commission considers that the question of the exact geographic market definition can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market even on the basis of the narrowest – local – market definition.

5. **COMPETITIVE ASSESSMENT**

- (18) The Transaction gives rise to a horizontally affected market with regard to the non-retail supply of diesel in the UK. Furthermore, it leads to vertically affected markets as regards
- (a) Greenergy's activities on the market for non-retail supply of diesel (upstream) and Inver's activities on the market for non-retail supply of non-road diesel (downstream) in the UK;
 - (b) Greenergy's activities on the market for non-retail supply of diesel (upstream) and Inver's activities on the market for non-retail supply of domestic heating oil (downstream) in the UK;
 - (c) Inver's storage facility in Cardiff (upstream) and Greenergy's activities on the markets for non-retail supply of refined oil products, namely diesel and gasoline (downstream) in the UK.

5.1. **Horizontal coordinated effects – non-retail supply of diesel in the UK**

5.1.1. *The Notifying Party's view*

- (19) The Notifying Party submits that the Transaction would not lead to competition concerns given the very limited activities of Inver and the large number of

¹¹ See cases COMP/M.6935 Argos / Sopetral (2014); COMP/M.6525 SESA / DISA / SAE / JV (2012); COMP/M.6463 Marquard & Bahls / Bominflot (2012); COMP/M.4532 Lukoil / ConocoPhillips (2007); COMP/M.1621 Pakhoed/Van Ommeren (1999); COMP/M.1464 Total / Petrofina (II) (1999).

¹² See cases COMP/M.6261 North Sea Group / Argos Groep (2011); COMP/M.6525 SESA / DISA / SAE / JV (2012); COMP/M.1621 TotalFina / Elf (2000).

suppliers active on the market. Furthermore, Greenergy notes that the Parties' customers are sophisticated purchasers who have significant leverage in relation to negotiations with their fuel suppliers.

5.1.2. *The Commission's assessment*

- (20) The Commission considers that the Transaction does not change the competitive structure on the market for non-retail supply of diesel in the UK for the following reasons.
- (21) First, although Greenergy is the market leader on the non-retail UK diesel market with a market share of [30-40]%, Inver is active only to a very limited extent. Its market share of less than [0-5]% is attributable to small volumes supplied occasionally to meet specific requests for diesel from certain customers such as road hauliers on an ad hoc basis.

Table 1 – Non-retail supply of diesel in the UK (by volume,2016)

Supplier	Volume	
	Millions of litres	%
Greenergy	[...]	[30-40]%
Inver	[...]	[0-10]%
Combined	[...]	[30-40]%
Phillips 66	[...]	[0-10]%
Exxon	[...]	[0-10]%
Petroineos	[...]	[0-10]%
Essar	[...]	[0-10]%
Total	[...]	[0-10]%
Valero	[...]	[0-10]%
Puma Energy	[...]	[0-10]%
Prax	[...]	[0-10]%
Mabanaft	[...]	[0-10]%
World Fuel Services	[...]	[0-10]%
Certas	[...]	[0-10]%
Others	[...]	[0-10]%
TOTAL	[...]	100%

Source: Form CO

- (22) Second, the merged entity would continue to face competition from numerous suppliers such as Phillips 66, Exxon and Petroineos.
- (23) Based on the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market with regard to the market for non-retail supply of diesel in the UK.

5.2. Non-horizontal effects

5.2.1. *Non-retail supply of diesel – non-retail supply of non-road diesel (UK)*

5.2.1.1. The Notifying Party's view

- (24) The Notifying Party submits that given the market dynamic on the upstream non-retail diesel market and the very limited position of Inver on the downstream market of non-road diesel in the UK the Transaction would not give rise to any prospects of either customer or input foreclosure.

5.2.1.2. The Commission's assessment

- (25) Standard diesel, being chemically identical, is an input product for "marked" or "red" diesel which is used as non-road diesel in agricultural (or similar) machinery or as domestic heating oil. In the UK, diesel is marked by adding a red dye additive, which is approved by HM Revenue & Customs. Once marked, red diesel is subject to more favourable tax/excise treatment than road diesel and therefore is prohibited to use in road vehicles.
- (26) Greenergy achieved a market share of [30-40]% on the upstream non-retail UK diesel market (see section 5.1). On the other hand, Inver's position on the downstream non-retail UK market of non-road diesel is limited, with a market share of [0-5]%.
- (27) The Commission considers that given the presence of numerous competitors on the upstream market and the very limited market shares of Inver on the downstream market, the merged entity would not have the ability to engage in input or customer foreclosure.

5.2.2. *Non-retail supply of diesel – non-retail supply of domestic heating oil (UK)*

5.2.2.1. The Notifying Party's view

- (28) The Notifying Party submits that given the market dynamic on the upstream non-retail diesel market and the very limited position of Inver on the downstream market of domestic heating oil in the UK the Transaction would not give rise to any prospects of either customer or input foreclosure.

5.2.2.2. The Commission's assessment

- (29) Similarly to non-road diesel, standard diesel is also an input product of domestic heating oil (see paragraph (25)).
- (30) Greenergy achieved a market share of [30-40]% on the upstream non-retail UK diesel market (see section 5.1). On the other hand, Inver's position on the downstream non-retail UK market of domestic heating oil is very limited, with a market share of less than [0-5]%.
- (31) The Commission considers that given the presence of numerous competitors on the upstream market and the very limited market shares of Inver on the

downstream market, the merged entity would not have the ability to engage in either input or customer foreclosure.

5.2.3. *Storage of petroleum products – non-retail supply of refined oil products*

5.2.3.1. The Notifying Party's view

- (32) The Notifying Party submits that the Transaction would not give rise to any competition concerns as there are and there will continue to be a number of other commercially available storage facilities in the Cardiff area. Furthermore, there is a significant degree of competition on the downstream markets.

5.2.3.2. The Commission's assessment

- (33) Inver owns and operates a terminal in Cardiff with a total storage capacity of [...]. Although it mainly uses it to store its own supplies, to a limited extent it offers storage capacity to third parties as well. Currently, its only customer is Greenergy. There are six other storage facilities within 150 km of Inver's terminal in Cardiff.

Table 2 – Storage facilities in the Cardiff area (2017)

Terminal	Estimated total capacity
Valero (Pembroke refinery)	[...] bbl/d
Puma Energy (Milford Haven)	[...] cbm
SemLogistics (Milford Haven)	[...] cbm
Inver (Cardiff)	[...] cbm
Prax Terminals (Cardiff)	[...] cbm
Valero (Cardiff)	[...] cbm
Puma Energy (Westerleigh)	[...] cbm

Source: Form CO

- (34) The Notifying Party submits that out of these facilities, SemLogistics' Milford Haven terminal and Prax Terminals in Cardiff are commercially available to third parties and are likely to have spare capacity. Based on this information, Inver's market share is [0-5]% on this local market.
- (35) Although the Transaction leads to vertically affected markets based on Greenergy's downstream position on the non-retail markets for diesel ([30-40]%) and gasoline ([40-50]%), the Commission considers that given the limited upstream position of Inver, the merged entity would not have the ability to engage in input foreclosure.
- (36) Furthermore, the Transaction would not lead to the ability of the merged entity to engage in customer foreclosure given that Greenergy currently exclusively uses storage capacity offered by Inver in the Cardiff area, therefore its demand was not

available for third parties pre-transaction. Furthermore, there are numerous competitors active on the downstream non-retail markets.¹³

5.2.4. *Conclusion on non-horizontal effects*

- (37) Based on the above, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market with regard to non-horizontal effects.

6. CONCLUSION

- (38) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

¹³ Each of Greenergy's competitors active in the supply of diesel is also active in the supply of gasoline.