



DETERMINATION OF MERGER NOTIFICATION M/15/078 - VITOL/SERGEANT MARINE/ASPHALT LOGISTICS & TRADING

Section 21 of the Competition Act 2002

Proposed acquisition of joint control by Vitol Holding B.V. and Sargeant Marine, Inc. of Asphalt Logistics & Trading B.V.

Dated 04 February 2016

Introduction

1. On 23 December 2015, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Vitol Holding B.V. (“Vitol”)¹, through the acquisition of 50% of the issued share capital in Asphalt Logistics & Trading B.V. (“Asphalt Logistics & Trading”) from Sargeant Marine, Inc. (“Sargeant Marine”)², would acquire joint control, with Sargeant Marine, of Asphalt Logistics & Trading.
2. Post-transaction, Asphalt Logistics & Trading will be operated as a joint venture (the “Joint Venture”) between Vitol and Sargeant Marine and it will have direct and indirect holdings in various companies engaged in the respective businesses of storing, trading and shipping of bitumen, bitumen products, pitch fuel and other ‘bottom of barrel’ derivatives, as well as in-chartering and out-chartering of vessels for the transportation of such products (collectively, the “Bitumen Business”).³

The Proposed Transaction

3. Sargeant Marine currently holds the entire issued share capital of Asphalt Logistics & Trading. Pursuant to the implementation of a share purchase agreement (“SPA”) entered into by Vitol, Sargeant Marine and Asphalt Logistics & Trading on 07 December 2015, Vitol will acquire 50% of the issued share capital in Asphalt Logistics & Trading, which will subsequently be operated as a joint venture between Vitol and Sargeant Marine (“the Shareholders”). Following implementation of the proposed transaction, Sargeant Marine and Vitol will each hold 50% of the issued share capital of, and will thus jointly control, Asphalt Logistics & Trading.

¹ [...].

² [...].

³ Bitumen is a semi-solid oil-based substance that is produced by removing the lighter fractions (such as liquid petroleum gas, petrol and diesel) from heavy crude oil during the refining process. The vast majority of bitumen is used in construction; primarily in paving and roofing applications. In North America, bitumen is commonly known as asphalt. (<http://www.eurobitume.eu/bitumen/what-bitumen>). For consistency, the Commission shall use the term bitumen (rather than asphalt) throughout this determination.



4. Post-transaction, the Shareholders will exercise their rights in relation to the Joint Venture in accordance with the terms and conditions of a shareholders' agreement between Vitol, Sargeant Marine and Asphalt Logistics & Trading (the "Shareholders' Agreement").⁴
5. The Bitumen Business [...]^{5, 6, 7}.
6. Following implementation of the proposed transaction, Sargeant Marine and Vitol will also continue to conduct separately their individual business activities which fall outside of the Bitumen Business and which are separate to the Joint Venture.

The Undertakings Involved

Vitol

7. Vitol is an energy and commodities company, founded in Rotterdam in 1966, with almost 40 offices worldwide. Vitol is active in the refining, storing, distribution of and trade in mineral oils, mineral oil products and biofuels. Its core business is physical trading, logistics and distribution, but these activities are complemented by refining, shipping, terminals and storage, exploration and production, power generation, mining and retail businesses.
8. In relation to bitumen, Vitol is involved both as a manufacturer and supplier, with three of its refineries (in Antwerp (Belgium), Bavaria (Germany) and Geelong (Australia)) engaged in manufacturing bitumen. As well as its own production, Vitol sources required grades of bitumen for its customers from refineries around the world. In addition, Vitol is involved in processing bitumen, bulk transportation of bitumen, trading and shipping of bitumen, bitumen products, pitch fuel and other 'bottom of barrel' derivatives, in-chartering of vessels for the transportation of bitumen and the operation of a bitumen storage facility for third parties.
9. Following the proposed transaction, Vitol will not operate independently any activity related to bitumen trading, except through Asia Vitol Group (which is not active in the State).
10. Vitol does not carry out any bitumen-related activities in the State. In the State, Vitol is primarily active in [...], with [...] % of its turnover in the State generated from [...] of those products.⁸

⁴ The Commission received a copy of the Shareholders' Agreement as an exhibit to the SPA and an annex to the Merger Notification Form which was submitted by the parties to the Commission on 23 December 2015.

⁵ [...].

⁶ [...].

⁷ [...].

⁸ [...] making up the remaining [...] % and [...] %, respectively, of Vitol's income generated in the State.



11. For the financial year ending 31 December 2014, Vitol's worldwide turnover was approximately €203 billion⁹, of which approximately €[...]¹⁰ was generated within the State.¹¹

Sargeant Marine

12. Sargeant Marine was established in 1984 and has offices in the United States ("US"), Netherlands, Romania and Switzerland. Sargeant Marine specialises in logistical bitumen solutions, being active in global trading, storage and marine transportation of bitumen products.
13. Sargeant Marine is active in bitumen-related activities only in the State.
14. For the financial year ending 31 December 2014, Sargeant Marine's worldwide turnover was approximately €[...]¹², of which approximately €[...]¹³ was generated in the State.¹⁴

The Joint Venture

15. Following implementation of the proposed transaction, it is envisaged that the Joint Venture will be engaged in the trading and shipping of bitumen, bitumen products, pitch fuel and other "bottom of barrel" derivatives, in-chartering and out-chartering of vessels for transportation of bitumen, the provision of services for downstream distribution and bitumen storage facilities, bulk transport of bitumen and wholesale of bitumen.

Rationale for the Proposed Transaction

16. The parties state in the notification:

"The parties wish to enter into an arrangement by which [Vitol] and [Sargeant Marine] will conduct a bitumen business as a joint venture. [...]."

Third Party Submissions

17. No submission was received.

Competitive Analysis

18. Following implementation of the proposed transaction, the Joint Venture will be conducting the Bitumen Business which is currently operated independently by each of the parties¹⁵ globally.
19. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case it is not necessary for the Commission to

⁹ Euro figure converted from USD 270 billion using the European Central Bank (ECB) conversion rate for 1 January 2014 – 31 December 2014.

¹⁰ Euro figure converted from USD [...] using the ECB conversion rate for 1 January 2014 – 31 December 2014.

¹¹ [...] Claimed as being confidential to Vitol.

¹² Euro figure converted from USD [...] using the ECB conversion rate for 1 January 2014 – 31 December 2014.

¹³ Euro figure converted from USD [...] using the ECB conversion rate for 1 January 2014 – 31 December 2014.

¹⁴ [...] Claimed as being confidential to Sargeant Marine.

¹⁵ [...].



define precise relevant product and geographic markets since there is no horizontal overlap between the parties' activities in the State given that Vitol does not carry out any bitumen-related activities in the State. Vitol's turnover in the State comprises revenue generated from [...].

20. There is no vertical overlap between the parties' activities in the State.
21. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

22. The Shareholders' Agreement between Vitol, Sargeant Marine and Asphalt Logistics & Trading contains [...], as well as a covenant restricting the Shareholders, for as long as they remain shareholders of the Joint Venture and for a specified period thereafter, from carrying on any activity that competes with the Bitumen Business of the Joint Venture (i.e. a non-compete obligation).
23. The duration of the non-compete obligation does not exceed the maximum duration acceptable to the Commission¹⁶ and, given the particular nature of the proposed transaction, the Commission considers the specific restriction to be directly related and necessary to the implementation of the proposed transaction.
24. [...].

¹⁶ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed transaction whereby Vitol Holding B.V., through the acquisition of 50% of the issued share capital of Asphalt Logistics & Trading B.V. from Sargeant Marine, Inc., would acquire joint control, with Sargeant Marine, Inc., of Asphalt Logistics & Trading B.V., will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission