competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM261Feb19

In the matter between:

Mercuria Energy Group Limited Primary Acquiring Firm

and

Aegean Marine Petroleum Network Inc Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 10 April 2019
Order Issued on	: 10 April 2019
Reasons Issued on	: 14 May 2019

Reasons for Decision

Approval

[1] On 10 April 2019, the Competition Tribunal ("Tribunal") approved the proposed transaction between Mercuria Energy Group Limited and Aegean Marine Petroleum Network Inc.

[2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Mercuria Energy Group Limited ("Mercuria"), a limited liability company incorporated in accordance with the company laws of Cyprus. Mercuria is ultimately controlled by MDJ Oil Trading Company ("MDJ"), which itself, is not controlled by any firm.

[4] Mercuria has multiple firms under its control, but relevant for the purpose of assessing the current transaction is its subsidiary, Minerva Bunkers Pte Ltd ("Minerva").

[5] Mercuria is a trader of physical energy products and dry bulk commodities. Its core business is sourcing, supplying and trading crude oil and refined petroleum products. From these origins it has expanded the portfolio to include petrochemicals, biofuels, environmental products, natural gas and LNG, power, coal, iron ore, base metals and a range of other dry bulk commodities and agricultural products.

[6] In South Africa, Mercuria is active in the trading/brokering of bunker fuel. Minerva is not a physical supplier of bunker fuel in South Africa.

Primary target firms

[7] The primary target firm is Aegean Marine Petroleum Inc ("Aegean"), a public company incorporated in accordance with the laws of the Republic of the Marshall Islands, and is not controlled by any firm.

[8] In South Africa, Aegean controls Aegean Bunkering Marine Services Limited ("Aegean Bunkering").

[9] Aegean is active in the physical supply of bunker fuel as a logistics service provider. It uses the services of a number of bunkering tankers and a floating storage facility which is owned by non-South African Aegean affiliates for the physical delivery of bunker fuel in South Africa to end-user customers.

Proposed transaction and rationale

Primary acquiring firm

[10] Mercuria submitted that the proposed transaction presented it (particularly Minerva), with the opportunity to expand its bunkering infrastructure and enable shippers to benefit from the target firm's physical network and expertise.

Primary target firm

[11] Aegean submitted that the proposed transaction presented the best opportunity for the target firm to stabilise its business operations and to value-maximise the business of the target firm.

[12] The merging parties submitted that in terms of the court-sanctioned scheme of arrangement, Mercuria intends to acquire 100% of the common equity of Aegean, resulting in Mercuria controlling Aegean post-merger.

The Bunker Fuel Industry Chain

[13] The proposed transaction affects the national markets for:

a. The physical supply of bunker fuel; and
b. The trading of bunker fuel.

[14] Bunker fuel is fuel used to power the engine of a shipping liner or vessel. Traders and brokers such as Mercuria buy and sell bunker fuel but are not physically involved in the supply of the fuel to the end-users. A physical supplier is responsible for delivering the bunker fuel to the end-users, refuelling of the vessels and the physical movement of the fuels from one point to another.

[15] It is important to view this merger in the context and functioning of the value chain of the Bunker Fuel Industry:

a. Vessel operators will approach a trader in order to acquire bunker fuel for their vessel.
b. The trader then enquires from various suppliers of bunker fuel (petrochemical companies) in order to find one with supply at the specific port.
    i. End-users find it convenient to appoint traders when purchasing bunker fuel as the traders are able to offer the end-users credit and payment terms for the end user to operate effectively, unlike the physical suppliers themselves who cannot offer such terms or credit.
    ii. It should be noted that a trader is not a necessity to purchase bunker fuel by the end-users.

Impact on competition

[16] The Commission found that the proposed transaction gave rise to a vertical overlap as the acquiring firm operates as a trader whereas the target firm is a physical supplier of bunker fuel.

[17] The Commission, in its investigation, considered the effects of the proposed merger on the physical suppliers competing with Aegean upstream and on traders competing with Minerva downstream.

[18] The Commission then considered input foreclosure by assessing whether the merged entity is likely to restrict input or increase the costs of its downstream rivals.

Input Foreclosure

[19] The Commission found that the procurement process of bunker fuel is such that vessel operators will approach traders for supply and the traders will then procure the bunker fuel from a physical supplier. The Commission considered whether the merged entity would, post-merger, deny other traders' access to the supply of bunker fuel such that they are not able to compete with Minerva in the trading of bunker fuel.

[20] The merging parties estimated that Aegean has a market share of approximately 20% in the supply of bunker fuel. Notwithstanding the reliability of the estimates, the Commission noted that Aegean competes against large international suppliers such as Shell, BP, and Engen who have manufacturing facilities/refineries in South Africa. The Commission was of the view that these other firms are likely to have some market power.

[21] Aegean, on the other hand, purchases bunker fuel from these same refineries and imports fuel from other locations. Additionally, the Commission was of the view that the market may in fact be global, serving to diminish the merging parties' post-merger market share even further.

The Counterfactual

[22] The Commission found that Aegean is under financial distress and that the relevant counterfactual would be the likely exit of Aegean from the market absent the merger.

[23] The Commission found that the target firm had been going through financial difficulties and that the Bankruptcy Court decision lead to the proposed merger, essentially saving the target firm from closure.

[24] Based on this the Commission concluded that the relevant counterfactual was that Aegean would fail absent the merger, meaning that pre-merger competition conditions would not have prevailed in any event. The market would have, instead, lost a physical supplier of bunker fuel. The merger allows Aegean to continue participating in the market and supplying bunker fuel in South Africa.

Customer Foreclosure

[25] The Commission did not consider customer foreclosure, as the acquiring firm, through Minerva has only recently entered the market. Minerva has only offered trading services for Aegean. Minerva has no other suppliers in South Africa who would be foreclosed as a result of the proposed transaction.

[26] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

[27] The merging parties submitted that the proposed merger is unlikely to have any employment effects in South Africa and it will not cause any job losses or retrenchments.

[28] Further, the Commission noted that the proposed transaction would have the effect of saving jobs as the employees of Aegean would likely have lost their jobs absent the merger.

[29] The Commission concluded that the proposed transaction is unlikely to result in any job losses or retrenchments.

Conclusion

[30] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approved the proposed transaction unconditionally.

Mr Enver Daniels

14 May 2019
DATE

Prof. Fiona Tregenna and Mrs Medi Mokuena concurring

Case Manager:	Kameel Pancham
For the merging parties:	Tamara Dini and Richard Bryce of Bowmans
For the Commission:	Innocent Mhlongo