



Jersey Competition Regulatory Authority ('JCRA')

Decision M169/08

Proposed Acquisition

of

Fuel Supplies (C.I.) Limited

by

Vitogaz SA

The Notified Transaction

1. On 3 June 2008, the JCRA received an application (the ‘**Application**’) for approval under Article 20(1) of the Competition (Jersey) Law 2005 (the ‘**Law**’) concerning the proposed acquisition by Vitogaz SA (‘**Vitogaz**’) of shares owned by Shell Distributor (Holdings) Limited (‘**Shell**’) in Fuel Supplies (C.I.) Limited (‘**FSCI**’).
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website, both on 6 June 2008, inviting comments on the proposed acquisition by 23 June 2008. No comments were received.

The Parties

(a) Shell

3. Shell is a holding company registered in England and Wales. The ultimate parent of Shell is Royal Dutch Shell plc (‘**RDS**’), which is also registered in England and Wales. According to the Application, the Shell Group is active worldwide in the exploration, production and sale of oil and natural gas. The Group is also active in the production and sale of chemicals and coal and has a broad portfolio of hydrogen, bio-fuel, wind and solar power interests. In Jersey, Shell is active through FSCI. In addition, Shell jointly operates the La Collette fuel farm, but this is not subject to the proposed acquisition.

(b) FSCI

4. FSCI is registered in Guernsey. The ultimate parent of FSCI is RDS. According to the Application, FSCI is active in the sale and supply of the following in Jersey: aviation fuel, boiler maintenance and repair services, bulk fuels, forecourt and non-forecourt sale of motor fuels, heating oil, lubricant products, and plumbing services.

(c) *Vitogaz*

5. Vitogaz is a company incorporated in France. It is 100% owned by Rubis SCA ('**Rubis**'), which is also incorporated in France. According to the Application Vitogaz and its affiliates are active internationally in the storage of bulk industrial liquids and the distribution of petroleum products. Neither Rubis nor Vitogaz currently provide any goods or services in Jersey.

The Requirement for JCRA Approval

6. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. According to Article 2(1)(b) of the Law, a merger or acquisition occurs for the purpose of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another.
7. Prior to the proposed acquisition, Shell holds (directly and indirectly) 100% of the shares in FSCI.¹ Following the proposed acquisition Vitogaz will acquire 100% of the shares in FSCI, pursuant to a share purchase agreement (the '**SPA**').² As Rubis owns 100% of Vitogaz it will, through its ownership of Vitogaz, acquire indirect control of FSCI.
8. The Parties applied for JCRA approval on the basis that FSCI supplies 100% of the aviation fuel in Jersey. Therefore, Vitogaz's proposed acquisition of FSCI satisfies the threshold set out in Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005, which states the JCRA's approval is required for a merger or acquisition where one or more of the parties has an existing share of supply of 40% or more in the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey.

¹ Shell directly holds 99.92% of FSCI with the remaining 0.08% being held by: Shell Chicheley Limited, Jack Dean Oils Limited, Savoy Place Nominees Limited, Shell Direct (Central) Limited, and Shell Direct (Midlands) Limited, each being entities within the Shell Group.

² Share Purchase Agreement relating to the Sale and Purchase of the Entire Issued Share Capital of Fuel Supplies (C.I.) Limited of 2 June 2008.

Market Definition and Competition Assessment

9. Under Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline.³
10. The activities that FSCI engage in are listed in Paragraph 4, above. However, for the reasons set out in the next Paragraph, it is not necessary to define the relevant markets in this matter.
11. As stated above in Paragraph 5, neither Vitogaz nor its parent entity Rubis currently supply any goods or services in Jersey, nor has the JCRA come across evidence which suggests that either company planned to commence supplying goods or services in Jersey, absent the currently proposed acquisition. In effect, therefore, Vitogaz is replacing FSCI with respect to relevant markets in Jersey. Based on this finding, the JCRA has no grounds to conclude that the proposed acquisition would result in a substantial lessening of competition, as there are no horizontal, vertical or other competition concerns due to the change in ownership of FSCI, irrespective of definition of the relevant market.

Ancillary Restraints

12. Under the European Union competition law as defined in the European Union, so-called ‘ancillary restraints’ (which are agreements that do not form part of the asset or share transfer but are considered to be ‘directly related and necessary to the implementation of the concentration’) are also subject to analysis in an acquisition review.⁴
13. The SPA contains a [REDACTED] non-compete clause. In addition, the Parties have submitted a Fuel Supply Agreement supplemental to the SPA, under which

³ JCRA Guideline, *Mergers and Acquisitions* at 6.

⁴ See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03, 10 (5 March 2005). Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union.

Shell U.K. Oil Products Limited (as agent for Shell U.K. Limited) agrees to guarantee to supply [REDACTED]% of the requirements of FSCI until [REDACTED], at the latest, at a specified price. The JCRA therefore assessed whether the restrictions in the SPA's non-compete clause and the Fuel Supply Agreement are directly related to, and necessary for, the implementation of the acquisition.

14. Based on the information provided by the parties to the JCRA, the Fuel Supply Agreement and the non-compete clause both appear to be directly related to and necessary for the implementation of the proposed acquisition, and therefore are ancillary to it. More specifically, with respect to the specified prices set out in the Fuel Supply Agreement, Shell has informed the JCRA that there is no question of the terms in and of themselves leading to an increase in price for the products supplied.⁵ With respect to the [REDACTED] non-compete clause, this complies with the guidance given by the European Commission on non-compete clauses, and we see no justification for departing from that guidance in this case.

Conclusion

15. The JCRA concludes that the proposed acquisition will not substantially lessen competition. The JCRA therefore approves the proposed acquisition under Article 20(1) of the Law.

2 July 2008

By Order of the JCRA Board

⁵ E-mail of 24 June 2008.