



Jersey Competition Regulatory Authority ('JCRA')

Public Version of

Decision M350/09

Proposed Acquisition

of

Assets owned by Shell UK Ltd

by

La Collette Terminal Ltd

The Notified Transaction

1. On 25 March 2009, the JCRA received an application (the ‘**Application**’) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the ‘**Law**’) concerning the proposed acquisition by La Collette Terminal Ltd (‘**LCT**’) of (a) the 60% share held by Shell UK Ltd (‘**Shell**’) in the consortium between Shell and Esso Petroleum Company Ltd (‘**Esso**’) which owns and operates the fuel storage facilities located at La Collette, and (b) the assets directly owned by Shell in these facilities.
2. The JCRA registered a notice of its receipt of the Application in the Jersey Gazette and on its website on 27 March 2009 inviting comments on the proposed acquisition by 10 April 2009. In addition to public consultation, the JCRA conducted its own market enquiries concerning the proposed acquisition, obtaining information from the applicants and third parties and visiting the La Collette facilities.

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, 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.
4. Shell currently owns 60% of the La Collette consortium. In addition, at the time of the Application, [REDACTED].¹

(b) LCT

¹ Application, paragraph 4.1. Also see paragraph 6 below.

5. LCT is company registered in Jersey in 2008 for the purpose of the acquisition. LCT is fully owned by Vitogaz SA.

(c) *Vitogaz*

6. Vitogaz SA (**'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. In 2008, the JCRA granted approval for the acquisition by Vitogaz of the shares in FSCI.² In Jersey, FSCI is active in the sale and supply of aviation fuel, boiler maintenance and repair services, bulk fuels, forecourt and non-forecourt sale of motor fuels, heating oil, lubricant products, and plumbing services.

The Requirement for JCRA Approval

7. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the JCRA. According to Article 2(4) of the Law, a merger or acquisition occurs for the purpose of the Law if an undertaking acquires the whole or a substantial part of the assets of another undertaking and the result of the acquisition is to place the acquiring undertaking in the business in which that undertaking was engaged immediately before the acquisition.
8. Pursuant to the proposed acquisition, LCT would acquire (a) the 60% share held by Shell in the consortium between Shell and Esso which owns and operates the fuel storage facilities located at La Collette (the **'Consortium'**) and (b) the assets directly owned by Shell in these facilities.
9. All finished petroleum products must be imported into Jersey and the facilities at La Collette handle all of Jersey imports. Following the proposed acquisition LCT

² Decision JCRA Decision M169/08 regarding the Proposed Acquisition of Fuel Supplies (C.I.) Limited by Vitogaz SA of 2 July 2008

would replace Shell for the provision of the services offered at the La Collette facilities. The proposed acquisition thus satisfies the Law's definition under Article 2(4).

10. The parties applied for JCRA approval under Article 1(4) of the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the '**Order**'), on the basis that Shell currently owns 60% of the facilities at La Collette which in turn provide 100% of the petroleum product storage facilities in Jersey. On the basis of these facts, pursuant to the Order, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.

Assessment

11. 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
12. As detailed below, the JCRA concludes the proposed transaction would not result in a substantial lessening of competition in Jersey or any part thereof.

Defining the Affected Relevant Market(s)

(i) The Relevant Product Market

13. The JCRA's analysis of the proposed acquisition starts with defining relevant product and geographic markets. 'A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.'⁴
14. All finished petroleum products are imported into Jersey by ship. Some supply runs are for Jersey only and some supply runs visit Guernsey and Alderney as

³ JCRA Guideline, *Mergers and Acquisitions* sections 5 and 6.

⁴ *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 [1997].

well. For this primary distribution, Shell currently uses a range of ships [REDACTED], some of which are owned by the States of Guernsey.

15. The facilities at La Collette handle all of Jersey's petroleum imports. La Collette provides the facilities necessary to take the petroleum products from the ships into storage tanks and from these tanks onto the loading racks that load the tanker trucks used by the distributors. Some of the facilities at La Collette are owned by the Consortium and some are sole use facilities, [REDACTED]. The shareholders in the Consortium, Esso and Shell, in general do not have dedicated individual tanks but the petroleum products are stored by product type.⁵ The Consortium as such does not take title to the petroleum products but rather provides its services to the shareholders, who in turn are billed in proportion of their use of the facilities.
16. There currently are no alternatives in Jersey to the La Collette facilities for the unloading and storage of petroleum products. Although there is a depot at Jersey Airport with a capacity of [REDACTED] of aviation products and retailers also may have some storage capacity, for the purpose of the unloading and storage of large quantities of petroleum products in Jersey there are no alternatives to the La Collette facility.
17. The customers of the Consortium are the distributors, Total, Rubis and the Esso branded distributor Petroleum Distributors (Jersey) Ltd. Each of these distributors has a fleet of trucks that transport petroleum products from the La Collette facility to mostly independently owned forecourts and industrial customers. The majority of the 38 forecourts in Jersey are branded as but not owned by Shell, Esso or Total. There are three unbranded forecourts. Unbranded forecourts for the purpose of this Decision are defined as stations that are not branded Total, Esso or Shell.
18. Total draws supplies from Esso stock in La Collette. Pursuant to a temporary supply agreement, Shell UK Oil Products Limited, acting as agent for Shell UK Limited, supplies petroleum products to Rubis through the La Collette facility.

⁵ Of the total capacity of the La Collette facility of 13,760 tonnes [REDACTED].

19. The relevant product market for the purpose of this Decision is therefore the provision of unloading and wholesale storage facilities for petroleum products. As detailed above, the currently is no substitute to La Collette for the provision of these services in Jersey. It is not necessary for the purpose of this Decision to consider whether a distinction should be made between the various petroleum products or between the unloading and storage of petroleum products.

(ii) *The Relevant Geographic Market*

20. The geographical market is the area over which substitution takes place. It comprises the area in which the undertakings concerned are involved in the supply and demand of the products or services, in which the conditions are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.⁶

21. Regarding the provision of unloading and wholesale storage facilities for petroleum products, on the basis the information presented above, the JCRA concludes that the relevant geographic market is limited to Jersey.

Effect on Competition

22. In assessing whether a merger will substantially lessen competition, the JCRA compares the merger's 'factual' and 'counterfactual.' That is, in reaching a conclusion about whether a merger is likely to lead to substantial lessening of competition, the JCRA makes a comparison between two hypothetical future situations, one with the merger (the factual) and one without (the counterfactual). The difference in competition between these two scenarios is then able to be attributed to the impact of the merger.⁷

⁶ See *European Commission Notice on the definition of the relevant product market for the purposes of Community competition law*, O.J. C 372 [1997].

⁷ JCRA Guideline, *Mergers and Acquisitions* section 5.

23. As a result of the proposed acquisition, Rubis in effect becomes vertically integrated in Jersey. The JCRA assessed whether the proposed acquisition could result in different abilities and incentives for Rubis that could result in a substantial lessening of competition in Jersey, compared to the current situation. The JCRA in particular assessed whether there would be effects on competition both downstream and upstream in relation to the relevant market. Upstream concerns the transportation of petroleum products to Jersey, and downstream concerns the distribution of petroleum products, primarily to forecourts located in Jersey.⁸
24. In a vertical context, the principal potential competitive concern arises from foreclosure. One particular form of foreclosure is input foreclosure, where “*the merged entity gains the ability to deny or restrict its rivals’ access to an important good or service, thereby raising the rivals’ costs by making it harder for them to obtain supplies of the input under similar prices or conditions as before the merger.*”⁹ The JCRA must determine whether the proposed acquisition would result in a risk of input foreclosure in Jersey.
25. The JCRA concludes that there is no evidence economic or otherwise, to indicate that following the proposed acquisition Rubis will have an increased ability or incentive to foreclose competition on the distribution or retail market in Jersey, compared to the current situation.
26. The JCRA notes that the ability to foreclose competition does not appear to be affected by the proposed acquisition. We understand that the Consortium, to which this acquisition concerns, merely acts as a storage facility and does not itself act as a fuel supplier in Jersey. [REDACTED].

⁸ See JCRA Decision C106/06 concerning the Motor Fuels Supply Agreement between Esso and Roberts Garages at ¶ 19 (25 June 2007) (identifying a relevant market as the sale of motor fuels for resale to the public in Jersey).

⁹ See JCRA Decision M133/07 concerning the Proposed Acquisition of C.I. Traders Limited by Sandpiper Bidco Limited at ¶ 17 (27 July 2007) and Decision M171/08 concerning the Proposed Acquisition of E.C. Le Feuvre Agricultural Machinery Limited by Jersey Royal (potato marketing) Limited at ¶ 19 (16 Sept. 2008).

27. The JCRA also concludes that the incentives to foreclose are not materially increased by the proposed acquisition. Regarding any incentive to foreclose competition, following the proposed acquisition, Total and the unbranded forecourts would be in a similar situation compared to the period prior to the recent acquisition of FSCI by Rubis. In other words, the new owner of the 60% share in the La Collette facilities is a vertically integrated petroleum company as was Shell, the previous owner. As listed in paragraph 17 above, even this situation allowed for the presence of Total and unbranded forecourts in Jersey. As stated in paragraph 25, the JCRA concludes that there is no evidence that following the proposed acquisition Rubis will have an increased incentive to foreclose competition on the distribution or retail market in Jersey. This conclusion equally applies when comparing the anticipated situation following implementation of the proposed acquisition with the situation prior to the 2008 acquisition of FSCI by Rubis.
28. Therefore, the JCRA concludes that the proposed acquisition would not result in a substantial lessening of competition in Jersey or any part thereof.

Conclusion

29. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

12 May 2009

By Order of the JCRA Board