



DETERMINATION OF MERGER NOTIFICATION M/14/030 - ZENITH / PHILLIPS 66

Section 21 of the Competition Act 2002

Proposed acquisition of Phillips 66 Bantry Bay Terminal Limited by Zenith Energy Ireland Limited

Dated 14 November 2014

Introduction

1. On 28 October 2014, in accordance with section 18(3) of the Competition Act 2002 (“the Act”), the Competition Authority (“the Authority”) received a notification of a proposed transaction whereby Warburg Pincus (Bermuda) Private Equity GP Ltd. (“WP Bermuda GP”) through an entity solely controlled by it, namely Zenith Energy Ireland Limited (“Zenith”)¹, would acquire sole control of Phillips 66 Bantry Bay Terminal Limited (“Bantry Bay Terminal”) from Phillips 66 Ireland Limited (Phillips 66 Ireland”).
2. On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014 (“the 2014 Act”), the Authority was dissolved and all of the functions vested in the Authority immediately before that date became vested in the Competition and Consumer Protection Commission (“the Commission”). Section 39(2) of the 2014 Act provides that references in any Act of the Oireachtas passed before 31 October 2014 to the Authority shall, on and after 31 October 2014, be construed as references to the Commission.
3. Section 6 of the 2014 Act provides that where a merger or acquisition was notified under Part 3 of the 2002 Act before the commencement of section 7(1)(b) and Parts 3 and 4 of the 2014 Act (i.e. before 31 October 2014), then, upon such commencement, the 2002 Act shall apply to the merger or acquisition as if the amendments effected by section 7(1) and Parts 3 and 4 of the 2014 Act had not been made.

The Undertakings Involved

The Acquirer – Warburg Pincus

4. Warburg Pincus is a private equity firm based in New York with a portfolio of more than 125 companies active in sectors including consumer, industrial and services (CIS), energy, financial services, healthcare, technology, media and telecommunications.

¹ Zenith is solely controlled by Warburg Pincus (Bermuda) Private Equity GP Ltd. (“WP Bermuda GP”) which is the general partner of the eleven private equity funds that indirectly hold an interest in Zenith (“WP Funds”). Warburg Pincus LLC is the private equity firm that manages the WP Funds. Warburg Pincus LLC and WP Bermuda GP are together collectively referred to as “Warburg Pincus”.



5. In the State, Warburg Pincus-controlled portfolio companies supply a range of goods and services to customers across a number of sectors. None of these customers is a competitor, customer or supplier of Bantry Bay Terminal.²
6. For the financial year ending 31 December 2013 Warburg Pincus worldwide turnover was approximately €[..], of which approximately €[..] was generated in the State.³

The Target – Bantry Bay Terminal

7. Bantry Bay Terminal is involved in the storage and distribution of crude oil and petroleum products from its facility in Whiddy Island, Bantry Bay, County Cork. In addition to offering storage facilities on a commercial basis, [..]% of Bantry Bay Terminal's storage capacity is contracted on a long-term basis to the National Oil Reserves Agency ("NORA"), the State body with responsibility for compliance with Ireland's EU and International Energy Agency obligations.⁴
8. For the financial year ending 31 December 2013, Bantry Bay Terminal's worldwide turnover was approximately €23.3 million, all of which was generated in the State.⁵

Rationale for the Proposed Acquisition

9. The parties state in the notification:

"The commercial objectives of the Proposed Transaction include to enable Zenith (i) to grow an international bulk liquids and terminaling business in the North Atlantic, and (ii) to manage a business with potential for growth and a stable revenue stream."

Third Party Submissions

10. No submission was received.

Competitive Analysis

11. None of the undertakings controlled by Warburg Pincus which are operational in the State is a provider, supplier, customer or competitor of Bantry Bay Terminal. Since there is no horizontal or vertical overlap between the parties, the transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

²The Warburg Pincus portfolio companies operating in Ireland include Accriva Diagnostics, Inc; Alert Global Media Holdings, LLC; Clondalkin Group Holdings B.V.; Ghostery, Inc; GT Nexus, Inc; Intellectual Property Associates Network GmbH; Multi-View, Inc; Survitec Group (Cayman) Islands Limited; Trinton Container International Limited; Wencor Group, LLC; and WP Safety- Kleen (Cayman) Limited. For more information see www.warburgpincus.com.

³ Based on USD \$[..] and USD \$[..] respectively, calculated using the ECB average annual exchange rate, for the period 1 January to 31 December 2013, of €1=\$1.3281.

⁴This includes an obligation to maintain at all times a minimum level of crude oil and petroleum products stock in accordance with the provisions of the National Oil Reserves Agency Act 2007. The current minimum level of stock to be held by NORA for 2014 is 1,454,000 tonnes of refined product, and 70,000 tonnes of Crude Oil which is equivalent to 89.5 days stocks. See <http://www.nora.ie/emergency-oil-stocks.138.html> for more information. [..].

⁵Based on USD \$30.976 million calculated using the ECB average annual exchange rate, for the period 1 January to 31 December 2013, of €1=\$1.3281.



12. The parties have entered into an agreement which includes a [...] non-solicitation clause for key employees of both undertakings.
13. On completion of the transaction, the parties will enter into a short-term agreement for the storage of products [...] at the Bantry Bay facility. [...].
14. The Commission considers that these restrictions are directly related and necessary to the implementation of the proposed transaction.



DETERMINATION

The Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Warburg Pincus (Bermuda) Private Equity GP Ltd., through Zenith Energy Ireland Limited, would acquire sole control of Phillips 66 Bantry Bay Terminal Limited 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 Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission