



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

IN THE MATTER OF

FIRST PHASE REVIEW

**JOINT VENTURE AGREEMENT & SHARE SUBSCRIPTION AGREEMENT
BETWEEN VTTI UAE B.V., HASCOL PETROLEUM LIMITED, FOSSIL
ENERGY PRIVATE LIMITED, ST LOGISTICS PRIVATE LIMITED AND
HASCOL TERMINALS LIMITED**

CASE: 900/Merger-CCP/17

Commission

Ms. Vadiyya S. Khalil
Chairperson

Mr. Ikram Ul Haque Qureshi

Member



ORDER

I Background

- 1 On 8 June, 2017, M/s Hascol Terminals Limited ("HTL" or the "Target") through its authorized representative submitted a pre-merger application (the "Application"), notifying and seeking the approval of the Competition Commission of Pakistan (the "Commission") for the Share Subscription Agreement of up to shareholding in HTL, entered into by and between VTTI UAE B.V. ("VTTI"), Hascol Petroleum Limited ("HPL"), Fossil Energy Private Limited ("FEPL"), ST Logistics Private Limited ("STL") and the Joint Venture Agreement entered into by and between VTTI, HPL & FEPL. The Application was submitted along with the necessary information and applicable processing fee in accordance with the provisions of the Competition Act, 2010 (the "Act") and the Competition (Merger Control) Regulations, 2016 (the "Merger Regulations"). The Commission's review of the proposed transaction is as under:

II Merger Parties

Party 1

- 2 VTTI is a wholly owned subsidiary of VTTI Holdings B.V. which is in turn wholly owned by WTTI B.V. VTTI is engaged in the business of building, owning and operating oil storage and distribution terminals globally. The company was registered on August 2011 in Rotterdam, Netherlands. It comes under the umbrella of Vitol group of companies. VTTI currently neither has any presence or operations in Pakistan and nor does it hold any shareholding in any company in Pakistan. As per the consolidated financial statements for the year ended 31 December, 2015 of VTTI B.V and its subsidiaries, the total assets of the group stood at USD (approximately PKR while the total revenue was stated as USD (approximately PKR

Party 2

- 3 HTL was incorporated in Pakistan on 30 May, 2016 under the Companies Ordinance 1984 (the "Ordinance") with an authorised share capital of PKR. The company is currently engaged in the business of storage of imported and locally produced petroleum and related products and the development of oil storage terminal facilities. It is a subsidiary of HPL, which has a shareholding of in the company. As per the audited consolidated financial statements for the year ended 31 December, 2016 of HPL and its subsidiaries, the total assets for the group were valued at PKR while sales stood at PKR

Party 3

- 4 HPL is a public listed company incorporated in Pakistan on 28 March, 2001. HPL is engaged in the business of purchase, storage, marketing and sale of petroleum products in Pakistan and Azad Jammu and Kashmir. The shares of the company are listed on the Pakistan Stock Exchange under the symbol "HASCOL". HPL has a wholly



VS 9H

owned subsidiary by the name of Hascombe Lubricants Private Limited and is also the parent company of HTL. HPL had total assets valuing PKR [redacted] while its turnover remained at PKR [redacted] as on 31 December, 2016.

Party 4

- 5 FEPL was incorporated in Pakistan on 12 November, 2012 under the Ordinance. The company is currently engaged the business of marketing and/or selling of petroleum products that are procured locally and/or internationally. They also have strategic investments in the Oil & Gas sector and also maintain a short-term investment portfolio. FEPL owns [redacted] shareholding in HPL. FEPL had total assets valued at PKR [redacted] while its other income was stated as PKR [redacted] as on 30 June, 2016.

Party 5

- 6 STL was incorporated in Pakistan on 29 March, 2011 under the Ordinance. The principal activity of the company is to operate as a Logistics Service Provider. STL had total assets valued at PKR [redacted] while its other income was stated as PKR [redacted] as on 30 June, 2016.

III Transaction

- 7 In the proposed transaction, VTTI, FEPL, STL and HPL have entered in to a Share Subscription Agreement dated 22 May, 2017 which would result in the divestment by HPL of its shareholding in HTL from [redacted] to [redacted] and VTTI's shareholding in HTL would increase from [redacted] (obtained through the execution of the earlier Share Purchase Agreement dated 3 January, 2017) to [redacted]. The remainder would be subscribed by FEPL and STL as [redacted] and [redacted] respectively.
- 8 Furthermore, the parties namely VTTI, FEPL and HPL have also entered into a Joint Venture Agreement dated 3 January, 2017 ("JVA") to fund and operate HTL as a vehicle for the purpose of setting up, developing and running a hydrocarbon storage and distribution terminal in Pakistan or any other business as agreed between the parties from time to time.
- 9 The total consideration for the proposed transaction amounts to PKR [redacted]. The merger parties will be funding the proposed transaction from their respective resources.
- 10 The transaction meets the notification thresholds as prescribed in Regulation 4(2)(a), (b), (c) & (d) of the Merger Regulations, with the combined assets of the merger parties being more than PKR 1 billion and combined turnover being more than PKR 1 billion. The transaction value also exceeds PKR 100 million and the amount of voting shares to be acquired by the parties in HTL exceeds 10%.

IV Relevant Market:

- 11 The relevant Product market in this case is the market for the "storage of petroleum and related products" which is a sub segment of the Midstream petroleum sector. The Midstream sector links the Upstream and Downstream petroleum sectors in the



V&A #

petroleum value chain. It includes resource transportation and storage. The Target is active in this market as it is engaged in the business of storage of imported and locally produced petroleum and related products and the development of oil storage terminal facilities. It may be noted that VTTI is also engaged in the same business as the Target but it has no presence in Pakistan, independent of its intended shareholding in the Target.

- 12 The storage facility is located at a plot in Port Qasim, Karachi. Petroleum products imported at the oil terminal, handled by Fauji Oil Terminal and Distribution Company (FOTCO), would be stored directly to the facility via the FOTCO jetty. This facility will act as a common storage point by HTL and other OMC's. The petroleum products will then be transported through their respective distribution networks. In view of the foregoing, the conditions of competition being homogeneous throughout Pakistan, hence the relevant market extends throughout Pakistan.

V Findings of the Phase I investigation on the competition assessment

The competition assessment in Phase I has resulted in the following findings:

- 13 The proposed transaction relates to a Share Subscription Agreement between VTTI, FEPL, STL and HPL. The transaction involves HPL divesting its shareholding from [redacted] to [redacted], whereby VTTI's shareholding would increase from [redacted] (obtained through the execution of the earlier Share Purchase Agreement dated 3 January, 2017) to [redacted]. The remainder would be subscribed by FEPL and STL as [redacted] and [redacted], respectively.
- 14 The proposed transaction also involves the JVA which has been entered into by and between VTTI, FEPL and HPL for the operation of HTL.
- 15 It is pertinent to mention that VTTI belongs to the Vitol Group. Vitol Dubai Limited also belongs to the ultimate parent of Vitol Group, Vitol Holding B.V. Vitol Dubai currently owns [redacted] shareholding in HPL, the parent company of the HTL. In light of the above, Vitol Dubai will consequent to the proposed transaction hold [redacted] indirect ownership in HTL out of the [redacted] shareholding of HPL in HTL.
- 16 The relevant market has a number of participants with the largest party identified by the merging parties as M/s Fauji Trans Terminal Limited (capacity of [redacted] MT) which has an approximate market share of [redacted] while HTL (capacity of [redacted] MT) has an estimated [redacted] share in the market in terms of storage capacity. According to the data provided, an estimate of the market size is limited to [redacted] MT storage capacity.
- 17 The market is regulated by the Oil and Gas Regulatory Authority (OGRA) and companies willing to enter the market need to obtain relevant licenses and permissions from OGRA.

- 18 Post-transaction, VTTI will achieve presence in the relevant market in Pakistan through its shareholding in HTL of up to [redacted]. However, there will be no change in the market shares of the Target in the relevant market as a consequence of the proposed transaction.



VSC

19 The proposed transaction does not meet the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Act.

VI Condition(s)

VII Conclusion

21 In conclusion, there is no evidence suggesting that the proposed transaction is likely to substantially lessen competition through the creation or strengthening of a dominant position in the relevant market. The proposed transaction is hereby authorized under Section 31(1) (d) (i) of the Act.

22 It is so ordered.


(Vadiyya S. Khalil)
Chairperson


(Ikram Ul Haque Qureshi)
Member



Islamabad the 20th June, 2017.