

BUNKERSPOT

GOING GLOBAL

THE BIGGER PICTURE
FOR MARINE FUELS

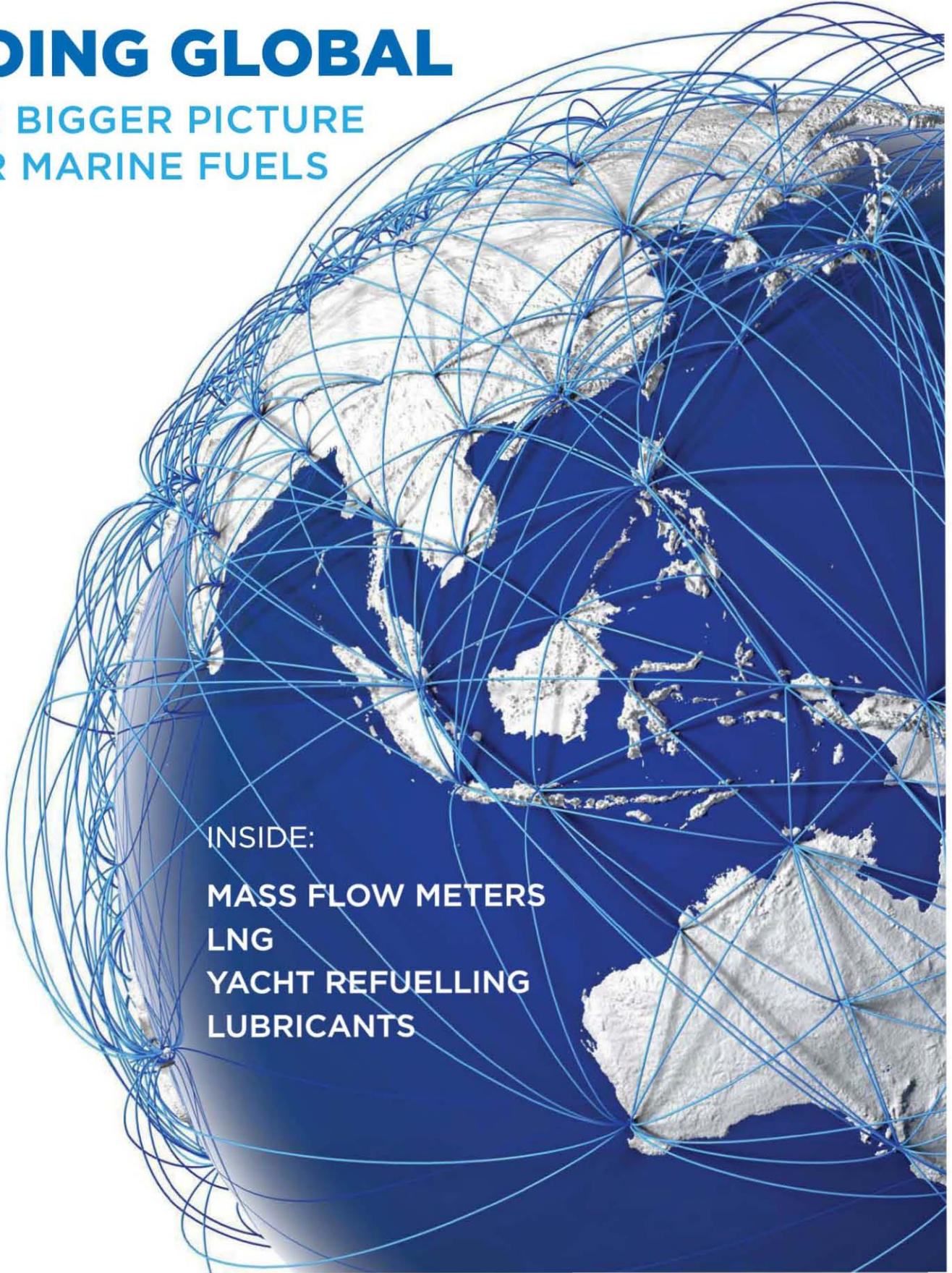
INSIDE:

MASS FLOW METERS

LNG

YACHT REFUELLING

LUBRICANTS



Passing muster

The EC is preparing to shift its angle of attack in its ongoing campaign against those who fail to comply with sulphur regulations. As the latest battle lines are drawn up, bunker suppliers are clearly in the line of fire. Drawing on the narrative of a well-known Russian epic, Steve Simms of Simms Showers looks at the latest strategy for regulatory enforcement

Tolstoy's 1869 novel *War and Peace* stands as one of the world's foremost literary works. Against the background of Napoleon's 1812 invasion of Russia, Tolstoy examines the struggle between the highly disciplined and organised Napoleonic forces and the spirited, independent but initially less-organised Russians.

Napoleon drew his army from an alliance of countries resembling what, little over two centuries later, could be seen as a post-'Brexit' European Union (EU). As the executives of this 'union', Napoleon's multinational commanders focused on planning, discipline, and control by regulation. Particularly in the area of environmental regulation, some might recognise today's European Commission (EC) to have a similar focus.

Tolstoy also might recognise today's bunker industry to be like the Russians awaiting Napoleon's invasion.

'You see, my dear sir, I have read your project,' interrupted Arakcheev, uttering only the first words amiably and then—again without looking at Prince Andrew—re-lapsing gradually into a tone of grumbling contempt. 'You are proposing new military laws? There are many laws but no one to carry out the old ones. Nowadays everybody designs laws, it is easier writing than doing.'

(War and Peace, Chapter IV)

In June 2016, the EC's Directorate - General Environment ('Directorate C – Quality of Life, Water & Air') issued a contract tender for a study of 'Current practices in enforcement of EU [European Union] marine fuel suppliers

and options for improvement under the scope of Directive 1999/32/EC.'

Up to now, it has been easier for the EC to design regulations for marine fuel suppliers, than to carry out that regulation. However, with the anticipated imposition of the 2020 global 0.50% sulphur cap, the regulatory invasion is coming directly to the bunker industry. The Commission's June contract tender thus explains that: Directive 1999/32/EC concerning the sulphur content of certain liquid fuels...[thus was] amended several times. The most significant amendment relating to marine fuel standards was adopted in 2012 transposing in EU law the sulphur related requirements of MARPOL Annex VI as revised in 2008.

* * *

One of the main elements of the 2012 revision of the Directive focuses on the reinforcement of implementation by Member States of the requirements regarding the sulphur content of fuels used on their territory or territorial seas. **This includes the need of acting on the fuel suppliers sector** as part of the national strategies in regulating the fuel market, also in view of the preparation work required on the global cap entering into force in 2020 under the Directive in EU waters, and possibly at global level.

* * *

In order to ensure cost-efficient and coherent implementation and enforcement by Member States of the set of standards for marine fuel 'quality', **the monitoring of the role of each player in the fuel market**

is essential, including on fuel suppliers. While until now the focus of the Commission measures was primarily dedicated to enforce the Directive's provisions mainly on ship operators, **it is now time to start collecting evidence and data on the performance of fuel suppliers.**

In view of the preparation required with entering into force in 2020 of the global cap, specific work is needed aiming at clarifying or screening **how Member States' competent authorities act in respect to monitoring fuel suppliers...**

[Emphasis added.]

Directive 1999/32/EC is the Commission's regulation which required EU Member States – implementing MARPOL VI – to (Article 4):

take all necessary steps to ensure that gasoils, including marine gasoils, are not used within their territory as from:

- July 2000 if their sulphur content exceeds 0,20 % by mass,
- January 2008 if their sulphur content exceeds 0,10 % by mass.

Directive 1999/32/EC (Article 6) also required that Member States:

shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.



The 1999 Directive now is over 17 years old (and its 0,20 % and 0,10 % limitations respectively over 16 and 8 years old). The Commission's June, 2016 contract tender recognises that in those years since 1999, there have been well short of 'all' necessary measures to check MARPOL compliance by the sampling of bunker sulphur content.

But, after Napoleon took power in 1804, it was eight years until he invaded Russia in 1812. So, one might say that for the marine fuels industry, the invasion has been long in coming (but long planned).

Invasion plans include the Commission's February, 2015 'Implementing Decision 2015/253, which, as the June tender, explains, is intended:

To reinforce the implementation measures in the Member States in view of the entering into force of the sulphur emission control area (SECA) requirements, the Commission adopted Implementing Decision 2015/253. It lays down the rules concerning sampling strategies and reporting. The Decision requires Member States to ensure sufficiently frequent and accurate sampling of marine fuels used on board ships, including inspections of ships' log books and bunker delivery notes and specify specific reporting requirements. Even if the Decision focuses on enforcement on ship operators, **fuel suppliers are also addressed**, albeit more broadly, with provisions on sampling

of marine fuels delivered to ships. **These provisions are currently targeting fuel suppliers which have been repeatedly found not to comply with the specification stated on the bunker delivery note**, taking into account the volume of marine fuels marketed by the supplier in question. [Emphasis added].

The advance troops of the invasion arrived last year – targeting marine fuel suppliers which 'at least three times in any given year' failed to deliver fuel complying with what their bunker delivery note (BDN) stated. Article 4 of the 2015 Implementing Decision ('Frequency of sampling of marine fuels while being delivered to ships') specifically requires that:

1. *In accordance with Article 6(1a)(b) of Directive 1999/32/EC and taking into account the volume of marine fuels delivered, Member States shall carry out sampling and analysis of marine fuels while being delivered to ships by those marine fuel suppliers registered in that Member State that have been found at least three times in any given year to deliver fuel that does not comply with the specification stated on the bunker delivery note on the basis of the reporting in the EU information system or in the annual report referred to in Article 7.*

Implementing Decision 2015/253 Article 7 then requires each Member State to annually report 'at least the following information' aiming at marine fuel suppliers:

'The question now is not whether the invasion is imminent - it is - but whether the marine fuel industry resolves to win it, over petty interests'

- (a) *the total annual number and type of non-compliance of measured sulphur content in examined fuel, including the extent of individual sulphur content non-conformity and the average sulphur content determined following sampling and analysis;*
- (b) *the total annual number of document verifications, including bunker delivery notes, location of fuel bunkering, oil record books, log books, fuel change-over procedures, and records;*
- * * *
- (d) *notifications and letters of protest with respect to the sulphur content of fuels against marine fuel suppliers in their territory;*
- (e) *a list containing the name and address*

of all marine fuel suppliers in the relevant Member State; [and]

* * *

(h) total number and type of infringement procedures initiated or penalties or both, the amount of fines imposed by the competent authority to both ship operators and marine fuel suppliers...

This language may seem familiar because it parallels that of Regulation 18 ('Fuel Oil Availability and Quality') of the October, 2008 Revised MARPOL Annex VI Regulations (paragraph 9) whereby the '[p]arties undertake to ensure that appropriate authorities designated by them':

1. maintain a register of local suppliers of fuel oil;
 2. require local suppliers to provide the bunker delivery note and sample as required by this regulation, certified by the fuel oil supplier that the fuel oil meets the requirements of regulations 14 and 18 of this Annex;
 3. require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection and verification by the port State as necessary;
 4. take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note;
- * * *
6. inform the Organization for transmission to Parties and Member States of the Organization of all cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18 of this Annex.

So, the MARPOL regulations have formed the foundations of the regulatory invasion for marine fuel suppliers, with the present aim since 2015 at those suppliers found three times in a year to be in violation.

A man in motion always devises an aim for that motion. To be able to go a thousand miles he must imagine that something good awaits him at the end of those thousand miles. One must have the prospect of a promised land to have the strength to move.

The promised land for the French during their advance had been Moscow, during their retreat it was their native land. But that native land was too far off, and for a man going a thousand miles it is absolutely necessary to set aside his final goal and to say to himself: 'Today I shall get to a place twenty-five miles off where I

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shall rest and spend the night,' and during the first day's journey that resting place eclipses his ultimate goal and attracts all his hopes and desires. And the impulses felt by a single person are always magnified in a crowd.

(War and Peace, Chapter XIX)

The coming of regulation to the marine fuels industry has been slow, but the June, 2016 Commission tender – along with the 2015 Directive – makes clear that the Commission imagines something good at the end of this long period.

From a distance, even marine fuel suppliers can see this good. That is, a responsible supplier will provide fuel with the required sulphur content. The benefits of low sulphur fuel for human health and the environment are well documented, and the detrimental effects of high sulphur fuel are proven.

Without enforcement, however (particularly where – at least initially – implementing the 0.50% standard likely arriving in 2020 may be difficult (or more expensive)), there will be incentive for some marine fuel suppliers to cheat, selling cheaper, non-compliant fuel but representing compliance in BDNs. There have been stops along the way in years of advancing regulation, but the end at the thousand miles – at least as far as the Commission is concerned – is reflected by the June, 2016 contract tender. That end is to be within 36 months (per the tender) with a 'deliverable' including the following (and the tender gives more specifics) tasks and outcomes:

Task 1: Provide an analysis clarifying and screening how Member States competent authorities act in respect of enforcement

of fuel oil suppliers in their territory. Check the alignment level with the reporting provisions of Decision 2015/253.

Outcome 1: Analysis detailing how Member States competent authorities act in respect of enforcement of fuel oil suppliers in their territory under the Directive (indicatively by month 12).

Task 2: Overview of Member States actions and measures to ensure compliant fuel availability and the Member States strategy to phase out the non-compliant fuel by redirection to other fuel markets.

Outcome 2: Analysis of Member States strategies to ensure availability of compliant fuel phase out/redirection to other fuel markets of non-compliant fuel (indicatively by month 18).

Task 3: Assessment and quantification of the current sulphur related quality problems with marine fuel supplied in EU ports, and their impact on 2020 low sulphur availability.

Outcome 3: Analysis of current sulphur related quality problems with marine fuel supplied in EU ports, and impact on 2020 low sulphur availability (indicatively by month 24).

Task 4: Interaction and coordination with Member States and relevant stakeholders of the European Sustainable Shipping Forum (ESSF).

Outcome 4: Supporting documents/questionnaire on Interaction with Member States and alignment with ESSF development (indicatively by month 30).

Each of these 'Tasks' and 'Outcomes', even though spaced over 30 months against a 36-month 'deliverable', have the clear objective of direct regulations of and enforcement directed to marine fuel suppliers – in addition to those who already have been in the aim of regulators (those, three or more times per year, misrepresenting content in their BDNs).

This puts the date of the direct battle between the regulators, and the spirited, independent and yet un-united marine fuel industry, at some point in at least mid-2019 (36 or so months away), or before.

Prince Andrew glanced at Timokhin, who looked at his commander in alarm and bewilderment. In contrast to his former reticent taciturnity Prince Andrew now seemed excited. He could apparently not refrain from expressing the thoughts that had suddenly occurred to him.

'A battle is won by those who firmly re-

solve to win it! Why did we lose the battle at Austerlitz? The French losses were almost equal to ours, but very early we said to ourselves that we were losing the battle, and we did lose it. And we said so because we had nothing to fight for there, we wanted to get away from the battlefield as soon as we could. "We've lost, so let us run," and we ran. If we had not said that till the evening, heaven knows what might not have happened. But tomorrow we shan't say it! You talk about our position, the left flank weak and the right flank too extended,' he went on. 'That's all nonsense, there's nothing of the kind. But what awaits us tomorrow? A hundred million most diverse chances which will be decided on the instant by the fact that our men or theirs run or do not run, and that this man or that man is killed, but all that is being done at present is only play. The fact is that those men with whom you have ridden round the position not only do not help matters, but hinder. They are only concerned with their own petty interests.'
(War and Peace, Chapter XXV)

The year 2019 may seem to be some time away, and after all, at least presently, it only seems to be the blatant violators who must fight on the front lines.

The question now is not whether the invasion is imminent – it is – but whether the marine fuel industry resolves to win it, over petty interests.

The petty interests are those, of course, which look to the short term gain, misrepresenting sulphur and other fuel content. They are present. At about the same time of the June, 2016 tender, Danish police authorities were investigating five shipping firms, which were using fuel in the European emission control areas (ECA) with sulphur quantities exceeding 900% of present limits. Observers comment that because Denmark's fines for such violations are relatively low, cheaters (including suppliers of non-compliant fuel) have little incentive not to cheat, given the otherwise favourable cost of non-compliant to compliant fuel. But, of course, the non-compliant fuel has to come from a supplier, of which, there are relatively fewer in the world's ports than ships.

So, doesn't it make sense – and the answer, of course, is, yes – to bear down on suppliers to ships rather than ships?

In fact, historians believe that Napoleon's invasion of Russia was not primarily to conquer Russia – but instead was to break Great Britain, at the time one of Russia's trading partners. So it makes sense, although it has taken the Commission some time to come

around to it: why chase the multitude of ships and shipowners, when one can break them of MARPOL violations by regulating – and enforcing regulations upon – their fuel suppliers?

Marine fuel suppliers must be firmly resolved to win the battle. But, they will not win it by standing by and waiting for the invasion.

Marine fuel suppliers first must recognise that their allies are their customers, vessel owners and charterers. It is these customers presently in the aim of regulators. But it also is these customers who very easily, and justifiably, will turn against the marine fuel suppliers which, complicitly or not, sell non-compliant fuel but misrepresent the contrary on their BDNs. Authorities will sanction those customers. It will not be long, that those customers will turn on the supplier selling the non-compliant fuel, with demands for indemnity against the fines and/or exclusions that the regulators have imposed. In addition to paying indemnity, the marine fuel supplier,

only with their 'petty interests', is how to turn back or at least slow the invasion. Clearly those in the industry know the non-compliant sources; the regulators don't but can, from industry sources standing against those sources for the best situation of the industry.

Lest the 'Russians' feel safe because they are not in Russia – that is, that they are not regulated by the EC, the United States and other countries who also are MARPOL signatories and maintain sometimes (in the case of the United States., for example) strict MARPOL enforcement, including considering marine fuel suppliers as enforcement targets.

In March, 2016, the US Coast Guard (which along with the US Environmental Protection Agency (EPA) is charged with enforcing MARPOL) initiated a voluntary fuel sampling programme among marine fuel suppliers in Baltimore and Los Angeles/Long Beach. The programme – as did the Commission's Directives and June, 2016 tender

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with the 2015 Directive, will invite regular scrutiny of its operations. The latter is not a bad result for the overall industry, but certainly expensive (in addition to the indemnity).

So, this means that marine fuel suppliers, and traders purchasing from them, must assure that they sell compliant fuel. The more compliance, the fewer inaccurate BDNs, the more the invasion will be slowed. If there are fewer and fewer findings of non-compliant BDNs, why then should regulators continue with the pace (although slow, certainly a continued pace) they have toward regulating the marine fuel industry?

This also means that marine fuel suppliers should not hesitate to turn in traitors. That is, suppliers sometimes are offered fuel which is cheap but unquestionably non-compliant. They know that they must turn down the offer, but also know that someone in the market, certainly with less integrity, cannot resist it. This – in the face of regulatory invasion – is the call for unity just as Tolstoy observed, the Russians unified as the invasion neared. Informing authorities of supplies on the market which are non-compliant, of those concerned

– was to answer vessel owners', charterers', and regulatory concerns that marine suppliers were submitting false BDNs and weren't bearing their fair responsibility for ECA 0.1% sulphur content compliance. Marine fuel suppliers, voluntarily, cooperated with the programme to enable the Coast Guard (and EPA) to decide whether they needed to engage in widespread testing of marine fuel suppliers. The incentive that regulators offered was that, if there was a finding of non-compliance after voluntary testing, the Coast Guard/EPA would not charge either the vessel owner/operator or supplier with a violation.

The result of the marine suppliers' cooperation was that nine samples from six vessels showed that the BDN weren't correct, out of 74 total samples. The Coast Guard/EPA, having seen a very low probability of non-compliance by marine fuel suppliers, decided to end even the voluntary testing programme, while reserving the possibility of resuming it.

Overall, in the United States at least, marine fuel suppliers' voluntary testing was a win-win. Those volunteering for testing highlighted those which might not be compliant

(why volunteer if you are non-compliant?) and also turned an 'invasion' of testing and regulation away because the voluntary testing raised regulators' confidence that those agreeing to testing would have accurate BDNs.

In other words, marine fuel suppliers firmly resolved to win the war against un-informed regulation, and must rise above petty interests each to commit to compliance. This is not only for both for the sake of individual suppliers' well-being, but also for their customers' well-being. Reliable suppliers, providing compliant fuel, offering truthful BDNs, will not only continue business in the long run, but also continue their independence and creativity.

Tolstoy in *War and Peace* writes how Napoleon advances after defeating the Russian army at Smolensk. As Napoleon moves toward Moscow, the Russians destroy what could resupply Napoleon as they retreat. The 'Union's' army becomes disorganised as its supply lines lengthen, and the Russians unite at Borodino, just short of Moscow. There, Tolstoy writes,

The Russians stood in serried ranks behind Semenovsk village and its knoll, and their guns boomed incessantly along their line and sent forth clouds of smoke. It was no longer a battle: it was a continuous

slaughter which could be of no avail either to the French or the Russians. Napoleon stopped his horse and again fell into the reverie from which Berthier had aroused him. He could not stop what was going on before him and around him and was supposed to be directed by him and to depend on him, and from its lack of success this affair, for the first time, seemed to him unnecessary and horrible.

(*War and Peace*, Chapter XXXIV)

Although Napoleon continued on to Moscow, historians agree with Tolstoy that Borodino was the turning point of the invasion. The finally united but still spirited Russians there changed what had seemed to be Napoleon's inevitable planning and organisation. His soldiers ultimately retreated with the Russian winter, leaving few by their return to France.

Now, a footnote to the Commission's tender is that '[t]he maximum budget allocated to this contract is fixed at €100,000, excluding VAT (including fees, travel and all other costs.' The tender also requires quite a bit of technical expertise.

Napoleon's supply lines ran so thin as he neared Moscow and certainly on retreat during the Russian winter, that for all of his Commission's regulation, Napo-

leon could not prevail. Some historians applaud this; others point toward the following, plodding Russian efforts afterwards to democracy, which in the 20th century led to Stalin's terrors, and wonder how history might have been different had Napoleon won.

Can the EC achieve what it wants, or seems to want, with a € 100,000 budget requiring much technical expertise stretched over 36 months? Who actually will bid on the tender, if anyone, or, will all qualified turn back?

There is no reason for the marine fuels industry and the Commission's regulators to meet on their figurative field of Borodino. They can meet, and reconcile, long before, with the marine fuel industry giving confidence to regulators that it can be self-regulating (to the service of its customers and the health of the larger public), and the regulators with confidence realising they can turn their guns into plowshares, working cooperatively for positive environmental change along with, and not in opposition to, the marine fuels industry.

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