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Case No COMP/M.1256 - OK EKONOMISK FÖRENING / KUWAIT PETROLEUM SVERIGE AB

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1998

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1256 – OK EKONOMISK FÖRENING/KUWAIT PETROLEUM SVERIGE AB
Notification of 23.11.1998 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 23.11.1998**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Kuwait Petroleum Europe BW (KPE) and OK Ekonomisk Förening (OKEF) notified their intention to merge the respective companies' petroleum assets and activities by setting up a joint venture, OKQ8 AB (OKQ8).

2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. KPE is wholly owned by the state of Kuwait through Kuwait Petroleum Corporation (KPC). World-wide, KPC is engaged in the exploration, production, refining, transport and marketing of Kuwaiti oil products and has operations in ten European countries, Kuwait, Hong Kong and Thailand. KPE operates on the Swedish market through Kuwait Petroleum Svenska AB (KPS), which runs petrol stations, manufactures lubricants and sells petroleum products to consumers.

4. OKEF is a Swedish cooperative owned by its members, some 1,331 million motorists. OKEF owns and operates a chain of petrol stations, garages, tyre centres and car rental units. The activities of OKEF include providing its members and other customers with fuels, lubricants and other car related goods

and services. In addition to OKEF, there are currently seven other OK-associations operating on the Swedish market. All OK-associations are separate legal entities independent from each other. This operation involves only OKEF.

5. All OK-associations have ownership interests in OK Marknadsservice AB (OKM), a wholesale company for store products, and in OK Försäljnings AB (OKF) which supplies the OK-associations with petroleum products, sells electricity and heating oil. OKEF has currently an 86.7% share in OKM. With regard to OKF, OKEF will purchase the shares held by the independent OK-associations in OKF within the near future and thereafter liquidate OKF.

II. THE OPERATION

6. The operation consists of the notifying parties transferring their respective petroleum businesses in Sweden into the joint venture. OKEF will sell all its assets to KPS who will pay OKEF with newly issued shares in KPS. KPE, via KPS, and OKEF will thereafter each own 50% of the votes and shares of OKQ8.

7. The parties will combine their activities in the field of distribution of fuels and lubricants to the end-users and other activities incidental to the operation of service stations, such as the sale of automotive accessories. The operational scope of the joint venture will be limited to Sweden.

III. THE CONCENTRATION

Joint control

8. The joint venture will be 50% owned by each of the parent and will be jointly controlled by the parties. The Board of Directors will consist of six members, of which KPE and OKEF will appoint three members each. It has been agreed between the parties that, at the outset, the Managing Director will be nominated by KPE. The Chairman of the Board will be chosen among the Board members nominated by OKEF and the Deputy Chairman among those elected by KPE. The Chairman will not have a casting vote. All decisions taken by the Board require a simple majority.

9. According to the Shareholders Agreement, the Board of Directors will decide on the most important issues related to the running of the joint venture. These include such strategic decisions as the business plan, the budget and major investments.

10. In view of the above, it is concluded that the joint venture is jointly controlled by the parties.

Full function joint venture operating on a lasting basis

11. The joint venture is established for an indefinite period to place it in a long-term sustainable position in relation to its competitors. The parties will make the relevant assets available to the joint venture.

12. The joint venture will be active in the market for distribution of fuels. In this market, distribution companies purchase refined oil products in large quantities on the upstream market and sell it on in smaller quantities. They operate storage and

transport facilities together with service stations. As outlined in the Commission decision *IV/M.511 – Texaco/Norsk Hydro*, they are active on a trade market within the meaning of the Commission notice on the concept of full-function joint ventures (at paragraph 14).

13. The joint venture will get supplies from one of its parents but also from other companies. The joint venture has a supply agreement, by which Kuwait Petroleum International Supply Company BV (KPISCO) will have the right to supply up to [between 60-90%] of the joint venture's annual forecast petroleum products demand. The Commission has noted that it is characteristic for the Swedish market to have one main supplier. The right of KPISCO to deliver to the joint venture is conditioned on KPISCO being able to offer the products at arms length competitive terms and conditions and that it chooses to use its right to supply. The joint venture is free to purchase a minimum of [between 10-40%] of its annual demand of petroleum products from third parties, which allows the joint venture to verify that KPISCO's offer is at arms length. Should this not be the case, the joint venture is free to purchase its petroleum products from alternative suppliers in the free market. The initial duration of the supply agreement is [between 1 and 5 years] and any further supply agreements will be concluded on [between 1 and 5 years] terms.

14. In the light of the above, the supply agreement does not call into question the functioning of the joint venture as an autonomous economic entity (see also the Commission decision I*V/M.574 – Saudi Aramco/MOH* with respect to a supply agreement with a parent company).

15. Based on the above, the Commission draws the conclusion that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

IV. COMMUNITY DIMENSION

16. KPC and OKEF have a combined aggregate world-wide turnover in excess of ECU 5,000 million (KPC: ECU 16,879 million, OKEF: ECU 488 million). Each of them has a Community-wide turnover in excess of ECU 250 million (KPC: ECU 3,717 million, OKEF: ECU 488 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

V. COMPATIBILITY WITH THE COMMON MARKET

a) <u>Relevant product markets</u>

17. The economic sectors concerned in the operation are broadly fuels, lubricants and car-related services. The parties have overlapping activities in a number of markets, such as in non-retail sales of fuels and home-heating (industrial lubricants, heating gas oil, heavy fuel oils), car rental and car wash services, car accessories, car insurance, bank and credit cards, loans to the public and deposits from the public. However, since the combined market share of the parties in these markets is often negligible and in any event does not exceed 10%, the overlaps are unlikely to lead to

any significant impact on these markets. Consequently, these markets will not be discussed further.

18. The parties have identified the following markets where the parties' combined market share will be above 15%: the market for sales of fuels (including petrol and diesel) through service stations; the market for automotive lubricants; and the market for convenience stores.

19. The Commission has considered the markets for sales of fuels and lubricants in some earlier decisions. In *IV/M.511 - Texaco/Norsk Hydro* the Commission noted that the distribution of refined oil products, such as petrol, diesel and lubricants, can be achieved either via service stations or by deliveries directly to the end customer. The Commission concluded that distribution of refined oil products and lubricants is basically a service and, consequently, based its assessment of the operation on the type and characteristics of the service rendered rather than on technical or physical distinctions of the products sold.

20. In case *IV/M.727 – BP/Mobil* the Commission considered *inter alia* the markets of retail sales of fuels (including petrol and diesel) and the manufacture and sale of lubricants. The Commission noted that fuels and lubricants are manufactured for specific uses and that there is no substitution for the vast majority of applications. The Commission noted further that the distribution of these products may occur together which justifies the aggregation of retail fuels into one category. With regard to lubricants, the Commission noted the limited demand-side substitutability of different types of lubricants. This is line with the parties' submission.

21. It is not necessary to delineate exactly the relevant product markets in this case because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area

22. The parties argue that the stores at service stations can be seen as part of the market for retail of provisions, which can be further subdivided into supermarkets and convenience stores. However, the Commission found in its decision IV/M.784 – Kesko/Tuko *inter alia* that although the basket of goods supplied by different supermarkets may vary in physical size, some smaller types of outlets such as specialised stores, kiosks and petrol stations do not offer a service which is in direct competition with the basket of goods concept. The Commission found consequently that the relevant product market did not include sales at specialised stores, kiosks and petrol stations. Therefore, and for the purposes of this decision, the relevant product market is stores at service stations.

b) <u>Relevant geographic markets</u>

23. As stated above, KPE operates on the Swedish market through KPS. OKEF is active only in Sweden. Since the operation will have an effect only at the national level, the parties have submitted Sweden as the relevant geographic market.

24. In *IV/M.511 - Texaco/Norsk Hydro* the Commission noted that the relevant geographic market consisting of deliveries to the end user by way of trucks is at least regional and in some cases national. The relevant geographic market

comprising deliveries to the consumer by service stations was found to be essentially local, as consumers' choices are restricted by transport constraints. In the present case these local markets can be seen as consisting of a continuous chain of overlapping zones, thus constituting a national market.

25. In this case it is not, however, necessary to delineate exactly the relevant geographic market because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

VI. ASSESSMENT

a) Retail sales of fuels

26. The parties have provided information based on market data supplied by the Swedish Petroleum Institute, a non-profit trade association. This data has also been largely used by third parties in their responses to the Commission enquiry.

27. With regard to the retail sales of petrol, the parties have estimated that the operation leads to a combined market share of 26.1% (OK 14.4% and KPS 11.7%). Statoil will have 24.1% and Shell 17.3% of the market. There are also other players on the market, such as Preem, Norsk Hydro and Jet. It should be noted, however, that the combined market share as submitted by the parties includes also 3.3% of petrol sales by other OK-associations. As discussed above, OK-associations are independent legal entities and do not form part of OKEF. Consequently, the parties' combined market share may be somewhat lower than indicated above.

28. As for the retail sales of diesel, it is to be noted that the combined market share of the parties is essentially lower than that for petrol, only about 10%. The joint venture will be positioned far behind the market leaders Shell (28.2%) and Preem (27.8%). According to the parties the low market share in diesel can be explained by the fact that 75% of the diesel sold in Sweden is sold through non-retail channels compared to only 3% of petrol sold non-retail. Both parties and especially OKEF have a larger share of retail customers than commercial and non-retail customers and, consequently, a smaller market share for the retail sales of diesel than for petrol.

29. According to the parties, there are approximately 3,605 service stations in Sweden of which the total number of the joint venture is 968 (1997 figures). The combined network of the parties thus covers approximately 27% of the service stations in Sweden. Based on the statistics published by the Swedish Petroleum Institute, Statoil has 634 service stations thus corresponding to some 18% of the market; Shell has 610 stations (17%); and Preem 519 stations in Sweden (14%). There are also other companies with an appreciable number of service stations. The Commission enquiry has confirmed that the competition is expected to be strong and third parties have expressed no concerns over the extent of the parties' service station network coverage in Sweden. Indeed, some third parties expect the joint venture to reduce this network in an attempt to rationalise the distribution network and cut costs.

30. On the basis of the above, given the fact that the parties' joint market shares are not excessively high and that the joint venture will face strong competition from a number of other players on the market (notably from Statoil and Shell), the Commission concludes that the operation will not have adverse effects on competition on the market of retail sales of fuels in Sweden.

b) Retail sales of lubricants

31. With regard to automotive lubricants, the market shares indicate that the market for retail sales of automotive lubricants in Sweden is very competitive. The parties estimate their combined market share at 15.8%, well below of that of Mobil (23.55%). There are also other important competitors in the market, such as Statoil (14.69%) and Preem (10.59%).

c) Stores at service stations

32. With regard to stores at service stations, the parties have estimated their joint market share at 22.9% (OKEF 13.3% and KPS 9.6%). Statoil would remain the clear market leader with a 38% share of the market and Shell would be second with a 24% stake. It should be noted that the above figures include the combined share of OKEF and the independent OK-associations. Therefore, the market share of OKEF alone - and consequently the combined share of the parties – may be somewhat lower than indicated above.

33. It can be seen from the above that the combined market share of the parties is not excessively high and that there are other competitors with higher market shares. The Commission investigation also suggests that the competition at the level of service station stores will increase in the future. According to third parties the retailers will invest more on service station stores in order to reduce their dependency on the fuel sales where the profit margins are currently squeezed.

34. Third parties have confirmed the existence of strong competition and expressed no concern with regard to the impact of the operation in Sweden.

<u>Conclusion</u>

35. Given all the above factors, the Commission considers that the proposed concentration does not give raise to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VII. CONCLUSION

36. For the above reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89.

For the Commission