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***Case No COMP/M.7185 - AGROENERGI / NEOVA
PELLETS / JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/05/2014

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EUROPEAN COMMISSION

Brussels, 15.5.2014
C(2014) 3373 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

**Subject: Case M.7185 - Agroenergi/ Neova Pellets/ JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 3 April 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Agroenergi AB ("Agroenergi" of Sweden), owned by Lantmännen ek för ("Lantmännen" of Sweden), and Neova Pellets ("Neova" of Sweden), owned by Vapo Oy ("Vapo" of Finland) intend to acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control by way of purchase of shares in a newly created company constituting a joint venture ("JV"). The JV will be active in the production and sale of wood pellets in Sweden. (Agroenergi and Vapo are designated hereinafter as the "Parties").²

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal No c 109 of 11.04.2014, p. 33.

1. THE PARTIES

- (2) Lantmännen is a Swedish corporate group active within food, energy, machinery and agriculture; its subsidiary, Agroenergi, is active in the wood pellets business in Sweden and Latvia. Agroenergi currently operates 4 wood pellets production plants in Sweden (Norberg, Ulricehamn, Malmbäck and Insjön) and one in Latvia (Talsi).
- (3) Vapo is a Finnish timber, sawmill, and bioenergy company; its subsidiary, Neova AB, is active, through Neova Pellets, in the wood pellets business in Sweden. Neova Pellets currently runs four production sites in Sweden: Ljusne, Främlingshem, Vaggeryd and Forsnäs.
- (4) Agroenergi and Neova are already both active in the production and sale of wood pellets and have a self-standing presence on the market.

2. THE OPERATION

- (5) The proposed transaction will lead to Agroenergi and Neova Pellets joining their Swedish wood pellet production activities (and Agroenergi's Latvian wood pellet plant). Particularly Agroenergi will issue new shares through a capital increase. Vapo will acquire the newly issued shares and will pay by means of a contribution in kind: in fact it will contribute Neova Pellets. As a result of the proposed Transaction, the new entity will be owned 50/50 by Lantmännen and Vapo.

3. THE CONCENTRATION

Joint control

- (6) In accordance with the information available to the Commission, the board of directors of the JV shall consist of up to five directors and two deputy directors. Lantmännen and Neova AB will have the right to appoint two directors and one deputy director each. One independent director (who shall be the chairman of the board) shall be appointed jointly by Lantmännen and Neova and each of them has the power to individually remove him.
- (7) Resolutions of the board shall be adopted by simple majority. The quorum requirements ensure that at least one Lantmännen and one Neova AB director must be present for a meeting. Resolutions on matters such as the appointment or dismissal of the managing director, approval of material changes to the business plan and the financing policy of the JV require the approval of both Lantmännen and Neova at a shareholders' meeting or of at least one of the directors appointed by Lantmännen and one of the directors appointed by Neova AB director when such a resolution is to be adopted at a board's meeting.
- (8) On the basis of the above the Commission considers that the JV will be jointly controlled by Lantmännen and Neova AB according to Article 3 (1) of the Merger Regulation.

Full Functionality

- (9) Pursuant to Article 3(4) of the Merger Regulation the JV must be a full-function undertaking and economically autonomous from the Parties.³
- (10) With regard to the parent companies, both Agroenergi and Neova Pellets are already active in manufacturing and selling wood pellets to their own customers. They have a presence on the market and are to a significant extent operationally autonomous in relation to their parent companies Lantmännen and Vapo (sales by Neova Pellets and Agroenergi to their parents currently account for [5-10]% of their total sales).
- (11) With regard to the JV, according to the information and evidence available to the Commission the JV will perform on a lasting basis as an autonomous economic entity. In particular, it will have: (i) sufficient resources to operate independently⁴ (the staff will be employed by the JV, not by the parents as provided for by in the shareholders agreement); (ii) its own management team and board of directors. Moreover, as the JV is already active on the market it will also have (iii) its own production sites (both parties will transfer all their existing wood pellets production sites to the JV); (iv) its own financing, as both the businesses already have their own customer base, and (v) its own supply agreements, notably for raw material.
- (12) In the light of the above the Commission considers that the JV will be a full-function undertaking within the meaning of Article 3(4) of the Merger Regulation.
- (13) The transaction therefore constitutes a concentration within the meaning of Article 3(1) b) of the Merger Regulation.

4. EU DIMENSION

- (14) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Lantmännen: EUR 3 761 million; Vapo: EUR 789 million). Each of them has an EU-wide turnover in excess of EUR 100 million (Lantmännen: [...]; Vapo: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. Furthermore, their combined aggregate turnover in three Member States is above EUR 100 million and their individual turnover in the same three Member States (being Sweden, Finland and Denmark) is above EUR 25 million. The notified operation therefore has an EU dimension according to Article 1 (3) of the Merger Regulation.

5. RELEVANT MARKET AND COMPETITIVE ASSESSMENT

- (15) The proposed transaction concerns the sector of bio fuels and particularly the production of wood pellets.

³ See also paras. 92 and 93 of the Commission Consolidated Jurisdictional Notice under Council Regulation No 139/2004, OJ C 95/1 of 16.4.2008 ("the Jurisdictional Notice") as well as the criteria to be fulfilled under paras 94 to 104 thereof.

⁴ Certain administrative functions (for example, IT and HR services) may be provided by either of the parents only on a temporary basis and for a start-up period (until mid-2015 at most).

(16) Wood pellets are a refined wood fuel within the group of biofuels. They are produced by milling, drying and pressing wood by-products such as sawdust and wood shavings. Wood pellets are used both by large industrial customers, using them to produce heat and electricity, and by residential customers, using them for heating purposes.

5.1. Relevant markets

5.1.1. Product market definition

5.1.1.1. Wood pellets

A. Distinction by type of biofuel.

(17) The Parties submit that wood pellets form a distinct market from other types of biofuels, such as wood powder and wood briquettes, and claim that a further segmentation according to certain characteristics, such as size, energy content or quality (industrial or residential) is irrelevant.

(18) The Commission has never analysed the market for the production of wood pellets in detail in the past.

(19) The market investigation confirmed that the majority of customers of the Parties do not see wood pellets as comparable to other types of refined wood fuels due to technical characteristics, such as the humidity content of the different types of fuels and the fact that wood pellets are more convenient with regard to storage and more suitable for automated machines. The market investigation also shows that different types of fuel require different types of burners and burners are usually not capable of processing different types of refined wood fuels. Even if wood briquettes could theoretically be burned to a certain extent in the same burners as wood pellets, this was described by the respondents to the market investigation as very uncommon and limited to industrial burners.

(20) Furthermore, the vast majority of respondent would not consider switching from using wood pellets to other refined wood products in the event of a small but lasting change in the relative price of the former. Respondent to the market investigation also confirmed that a hypothetical switching from wood pellets to other types of refined wood products would entail significant investments and time. This is confirmed by the fact that the vast majority of respondents to the market investigation did not switch in the past.

(21) Moreover, the Parties' competitors confirmed that even if switching production to wood pellets from other types of refined wood products is possible, this would be technically complex since it would require a significant amount of time, more than one year, and relevant investments which the majority of competitors perceive as too high and unprofitable. This is also confirmed by the fact that none of the respondents to the market investigation switched their production in the past.

(22) In the light of the above and of the other available evidence the Commission considers that there are strong indications that wood pellets constitute a separate product market. However, the precise product market definition regarding the differentiation of wood pellets from other types of biofuels can be left open since the

present Transaction does not give rise to competition concerns under any plausible market definition.

B. Segmentation by size of the burner

- (23) The Parties further submit that any segmentation of the product market depending on the capacity of the burner (large, medium, small), would be inappropriate.
- (24) In this respect, the Parties argue that is common practice in the industry to categorize clients according to the size of the burner in which wood pellets are used. According to this practice, three different customers group can be identified:
- a. large scale customers (capacity of the burner above 2 MW), such as local energy companies who use wood pellets (among other fuel types) for producing heat, which is then sold via the local heating network;
 - b. medium scale customers (capacity of the burner between 25 kW and 2 MW), such as local municipal buildings including schools and hospitals, and all sorts of businesses (bakeries, manufacturing, etc.). The medium scale segment can also include industrial clients using pellets to produce heat for local heating networks (but on a smaller scale than large customers); and,
 - c. small scale customers (capacity of the burner below 25 kW), such as end consumers using refined wood pellets to heat their private houses, as well as the resellers to / through whom pellet manufacturers sell (and who in turn sell to end consumers).
- (25) The Parties however consider that the above categories should not be treated as different product markets but rather as potential segments of a larger product market as the product purchased is the same and prices are dependent on the volume purchased.
- (26) The market investigation confirmed to a large extent that sales to large customers and sales to medium customers are not comparable as the main contractual terms and conditions (such as obligation to purchase certain volumes, means of delivery, size of the standard delivery, terms of delivery) are different.
- (27) With regard to direct sales to small customers, competitors of the Parties active in sales to large and medium customers confirm that starting the sale of wood pellets directly to end customers would require one year and it would entail very high costs rendering a potential entry into the market unprofitable.
- (28) In the light of the above the Commission considers that there are indications that sales to large customers, medium customers and small costumers, as defined in paragraph 24, may constitute different product markets.
- (29) However as the present Transaction does not give rise to competition concerns under any alternative market definition with regard to the customer type (small, medium, large), the exact product market definition can be left open.

C. Segmentation by sale channels

- (30) The Parties submit that, similar to the distinction by costumer types, any segmentation of the product market according to the different sale channels, e.g

wholesale, non-retail and retail would also be inappropriate and that all sales of wood pellets should be regarded as part of a wide product market.

(31) The Commission also considered an alternative segmentation according to sale channels. On the basis of such a segmentation, the following segments could be identified:

- a. retail segment including only direct sales to small end customers;
- b. non-retail segment including resellers, as well as medium and large scale customers; and,
- c. cargo or wholesale segment for extra-large, industrial customers having access to direct, cargo-sized, deliveries of wood pellets by primary transport.

(32) However, the market investigation shows that a possible segmentation of the market according to sales channel may not to be appropriate. Competitors tend to classify their customers according to size of the burner or by size of the package rather than according to sales channel.

(33) In any event, as the present Transaction does not give rise to competition concerns under any plausible market definition based on the different sale channels, the Commission considers that the precise product market definition can be left open.

5.1.1.2. District Heating

(34) Both Lantmännen and Neova, through Agrovärme and Neova EL & Värme respectively are active in the district heating sector in various locations in Sweden.

(35) In past decisions, the Commission has taken the view that the provision of district heating constitutes a separate product market.⁵

(36) However as the present Transaction does not give rise to competition concerns under any plausible market definition, the precise product market definition can be left open.

5.1.2. *Geographic market definition*

5.1.2.1. Wood Pellets

(37) The Parties submit that the market for wood pellets, irrespective of its precise definition, is at least national since competition conditions within Sweden are homogeneous and there are no appreciable differences at regional level within Sweden in so far as almost all producers apply national price lists and retail prices are consistent throughout the country.

(38) The Parties also submit that the geographic scope of the wood pellet market may be wider than national as it may include the Baltic countries. In this regard, they mention that almost 30% of the total wood pellets sold in Sweden today is imported (mainly from the Baltic region and Russia and to a lesser extent from North America). Even

when shipping and harbour handling costs are taken into account, imported wood pellets can compete with Swedish-produced wood pellets mostly because production costs outside Sweden are significantly lower.

- (39) In this respect, the market investigation shows that the majority of customers procure wood pellets at a national or broader level and a minority at local level, within a radius of 100 kilometres to 300 kilometres. However, the majority of customers, and particularly large industrial customers, confirmed that in response to a small but permanent increase in prices they would start procuring wood pellets from outside of Sweden and particularly from the Baltic region, Scandinavia and to a lesser extent from Russia. Smaller customers, such as resellers, appear to be less sensitive to small price changes.
- (40) Further, competitors stated that the geographic scope of the market is wider than national as they supply on a wider regional level, including Norway, Sweden, Finland, Denmark, the UK, Belgium and the Netherlands.
- (41) The market investigation also showed that there are no particular barriers to entry into the Swedish market, pricing of wood pellets is homogenous at least at national level and probably on a regional basis and that quality of wood pellets is homogeneous in Sweden.
- (42) In the light of the above and of the other available evidence, the Commission considers that there are indications that the market for the sale of wood pellets is at least national in scope. The Commission considers that the retail sale, or sale to small customers depending on the market definition retained, may be not wider than national. However, as the present Transaction does not give rise to competition concerns under any alternative market definition, the precise geographic market definition can be left open.

5.1.2.2. District heating

- (43) In a past decision,⁶ the Commission has considered the geographic scope of the market for district heating to be local and limited to the relevant network.
- (44) It should be mentioned that the district heating providers source the fuels they need nationally or possibly at a broader level.
- (45) As the present Transaction does not give rise to competition concerns under any alternative market definition, the exact geographic market definition can be left open.

5.2. Competitive Assessment

5.2.1. Horizontal relationship

- (46) On the basis of a product market encompassing the entire Swedish market for wood pellets, irrespective of the type of customer, the Parties' combined share would be [20-30]% (see table 1).

⁶ M.5793 – DALKIA CZ / NWR Energy; M.5365 – IPO/EnBW/PRAHA/PT; M.2701- VATTENFALL/BEWAG.

- (47) If the market for wood pellets in Sweden was to be further segmented distinguishing small, medium and large scale customers, the proposed transaction would lead to affected markets for sales to small and medium customers, with the combined shares of the Parties at [20-30]% and [30-40]% respectively (see table 1).

Table 1 (2012).				
	Wood pellet sales to all customers, Sweden	Wood pellet sales to large scale customers, Sweden	Wood pellet sales to medium scale customers, Sweden	Wood pellet sales to small scale customers, Sweden
Agroenergi	[10-20]%	[5-10]%	[10-20]%	[5-10]%
Neova Pellets	[10-20]%	[5-10]%	[10-20]%	[10-20]%
JV	[20-30]%	[10-20]%	[30-40]%	[20-30]%
SCA Bionorr	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Stora Enso Timber	[10-20]%	[5-10]%	[10-20]%	[0-5]%
Skellefteå Kraft SB	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Bioenergi Luleå AB	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Rindi Pellets	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Laxå Pellets	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Derome	[0-5]%	-	[0-5]%	[5-10]%
BooForssjö Bruk	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Vida Pellets	[0-5]%	-	-	[0-5]%
Pemco	[0-5]%	-	[0-5]%	[0-5]%
Others	9%	-	13%	19%
Imports	27%	56%	8%	5%

- (48) On the basis of an alternative segmentation of the Swedish wood pellet market distinguishing retail, non-retail and cargo sales, the proposed transaction would only lead to an affected market for sales to non-retail customers with a combined share of the Parties equal to [20-30]% (see table 2).

Table 2 (2012).			
	Wood pellet sales to retail customers, Sweden	Wood pellet sales to non-retail customers, Sweden	Wood pellet sales to cargo customers, Sweden
Agroenergi	[0-5]%	[10-20]%	[0-5]%
Neova Pellets	-	[10-20]%	[0-5]%
JV	[0-5]%	[20-30]%	[0-5]%
SCA Bionorr	[0-5]%	[5-10]%	-
Stora Enso Timber	[80-90]%	[10-20]%	-
Skellefteå Kraft SB	[0-5]%	[5-10]%	-
Bioenergi Luleå AB	[0-5]%	[5-10]%	-
Rindi Pellets	[0-5]%	[5-10]%	-
Laxå Pellets	[0-5]%	[0-5]%	-
Derome	[0-5]%	[0-5]%	-
BooForssjö Bruk	[0-5]%	[0-5]%	-
Vida Pellets	[0-5]%	[0-5]%	-
Pemco	-	[0-5]%	-
Others	5%	12%	5%
Imports	-	13%	92%

- (49) The JV would become the strongest player on a fragmented Swedish market for wood pellets or any submarket considered. The combined market share of the JV would however be less than 30% in all submarkets considered except for the market for medium scale customers where the market share would be [30-40]%. On each of these markets competitors with significant market shares (e.g. SCA Bionorr and Stora Enso Timber) would remain present.
- (50) The market investigation confirmed that all customers, both large industrial customers and resellers, continue to have sufficient alternative potential suppliers to the JV.
- (51) In particular, the market investigation shows that:
- a. All the customers do multisource and, notwithstanding the market share of the combined entity, all the respondent to the market investigation confirmed that they have a sufficient number of potential alternative suppliers;
 - b. None of the Parties is perceived as an inevitable supplier for wood pellets by their customers;
 - c. Barriers to entry to the market are low and there has been entry in the past, such as by Stora Enso in 2009 and new entry is expected also in the future, such as by Södra Skogsenergi which is expected to enter the market in 2014

and further expand production by 2015. This is particularly true for resellers, while the entries seem to not have affected the large industrial customers;

d. The vast majority of customers are not dependent on any given supplier.

(52) The Parties claim that imports play an important role on the market as almost 30% of all wood pellets sold in Sweden are imported. The market investigation confirmed this argument to a certain extent. Some customers, particularly large industrial customers, engage in direct import of wood pellets and a larger proportion currently purchases imported wood pellets. Swedish producers of wood pellets are therefore constrained by imports, which accrue to a significant proportion of the market.

(53) The Parties also claim that other types of fuels, and particular fossil fuels, constitute a competitive constraint as customers usually have a back-up heating or electricity source, as the case may be.

(54) The market investigation confirmed that the majority of customers, both large industrial customers and final end users use alternative fuels as a source of heating/energy (as the case may be). Customers could therefore use this alternative source without incurring additional cost or time. Moreover, with particular reference to small end customers, the market investigation confirmed that switching to alternative sources of fuels can occur in a limited amount of time and with limited investments.

(55) It appears from the market investigation that other types of fuel, albeit not being part of the same market, exert a competitive constraint on the sale of wood pellets in Sweden.

(56) If a narrower geographic market is examined, that is a catchment area of 100 kilometres around each production plant of the Parties, a minimum of three competitors with an annual capacity of more than 5 000 tons are present on any regional market. If the catchment area was to be extended to 150 kilometres the number of competitors with an annual capacity of more than 5 000 tons increases to an average of 8.

(57) In each of the geographic catchment areas of 100 and 150 kilometres around a production plant of the Parties, a number of smaller competitors with an annual capacity below 5 000 tons is present as well.

(58) In the light of the above the Commission considers that even on the basis of a narrower geographic market for the sale of wood pellets based on a catchment area of 100 and 150 kilometres respectively the Parties would face competition from a significant number of competitors.

(59) On the basis of the above and of the available evidence, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the Swedish market for wood pellets or any submarket considered.

5.2.2. *Vertical relationship*

(60) The proposed transaction will also lead to a potential vertically relationship between the JV's activity upstream in the market for wood pellets and the parents'

activity downstream in the provision of district heating as wood pellets are one of the type of fuel used by district heating providers.

- (61) On a Swedish market for the provision of district heating, irrespective of the type of fuel burnt, the combined market share of Agrovärme and Neova El & Värme is very limited, [0-5]%.
- (62) Wood pellets do not constitute an essential input on the market for district heating as less than 10% of district heating in Sweden is generated by wood pellets. Moreover, the market investigation confirmed that players in this sector do have alternative sources of heating burning other fuels already in place and hence switching would not be costly.
- (63) The JV position on the upstream market for the production of wood pellets does not lead to a significant degree of market power. On an overall market for the sale of wood pellets the JV would have a [20-30]% market share and if the market was to be further segmented according to size of the burner the market share would fall to [10-20]%. On the contrary, if the market was to be segmented by sales channel the market share would be equal to [20-30]% in a worst case scenario.
- (64) Finally, both Agrovärme and Neova El & Värme are already supplied with wood pellets by their parents; thus, the Transaction will not lead to any change in the customer base of the JV's rivals.
- (65) In the light of the above, the Commission takes the view that the JV will not be able to restrict access to wood pellets in the downstream market for the provision on district heating.
- (66) In the downstream market for district heating, only 10% of the heating energy was generated by burning wood pellets and the Parties only generated [0-5]% of the total heating energy. Other players in the district heating market such as Fortum, Öresundskraft, Vattenfall and E.ON generated significantly more heating by burning wood pellets.
- (67) Hence, the Commission takes the view that on the downstream market a sufficient number of alternative customers remain so that the Parties will not have the ability to restrict access to customers.
- (68) In the light of the above and of the available evidence, the Commission considers that the proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the vertical relationship between the upstream production of wood pellets and the downstream provision of district heating.

6. CONCLUSION

(69) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President