

***Case No IV/M.1231 -
IVO / STOCKHOLM
ENERGI***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 05/08/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.08.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M.1231 – IVO / STOCKHOLM ENERGI

Notification of 3.7.1998 pursuant to Article 4 of Council Regulation N/ 4064/89¹

1. On 3.7.1998 Stockholms Stadshus AB (“Stadshuset”) and IVO Energi AB (“IVO”) notified to the Commission their intention to acquire joint control of two existing companies, Stockholm Energi AB (“Stockholm Energi”) and Gullspång Kraft AB (“Gullspång Kraft”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Stadshuset is a holding company that consolidates the majority of companies owned by the City of Stockholm. The companies are active in a number of fields including energy and water supply, school property management, housing, harbour administration, refuse collection and recycling, parking and cultural activities. The energy subsidiary, Stockholm Energi, is held through Stadshuset AB (“Stadshuset AB”), and carries out its activities in the field of electricity, heating, cooling and gas. Stockholm Energi has no activities in Finland.

¹As amended by Council Regulation (EC) N° 1310/97 of 30.06.1997 (OJ.L 180/1, 09.07.1997).

4. IVO is the largest electricity producer in Finland. It is active in Sweden mainly through its subsidiary Gullspång Kraft, which is in the business of production and distribution of electricity and heating, electricity measuring systems and services related to electricity production.

II. THE OPERATION

5. The notified operation consists of the parties acquiring joint control of Stockholm Energi and Gullspång Kraft. As stated above, Stockholm Energi is owned by Stadshuset. Gullspång Kraft is owned by IVO. The acquisition of joint control will be achieved by a transfer by Stadshuset of 50% of the share capital of Stadshuset to IVO and a transfer by IVO of the whole of the share capital of Gullspång Kraft to Stadshuset. Stadshuset, which will change its name to Birka Energi AB (“Birka Energi”), will then own all the share capital of both Stockholm Energi and Gullspång Kraft.
6. Birka Energi will be jointly controlled by Stadshuset and IVO. As Birka Energi will take over the existing activities of Stockholm Energi and Gullspång Kraft, it will perform on a lasting basis all the functions of an autonomous economic entity. The notified operation therefore constitutes a concentration in the meaning of Article 3(1)b of the Merger Regulation.

III. COMMUNITY DIMENSION

7. Stadshuset and Fortum Oyj (“Fortum”), which owns the share capital of IVO, have a combined aggregate world-wide turnover in excess of ECU 5,000 million (Stadshuset ECU >2.000 million, Fortum ECU >11,000 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Stadshuset ECU >2.000 million, Fortum ECU >8.000 million). They do not achieve more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension in accordance with Article 1(2) of the Merger Regulation. It does not constitute a co-operation case under the EEA-agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

8. The parties have submitted that the production and supply of electricity is relevant product market.
9. The Commission has considered electricity markets in two recent decisions². It is not, however, necessary to exactly define the relevant product markets in the present 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.

² IV/M.931 – IVO/Neste; IV/M.1169 – EDFI/Grange

B. Relevant geographic market

10. The parties acknowledge the view adopted by the Commission in Case IV/M.931 IVO/Neste, where it was concluded that the electricity markets in the Nordic countries remain essentially national. In view of the restrictions that still apply to cross-border trade of electricity, the parties have submitted Sweden as the relevant geographic market.
11. For the above reasons and for the purposes of this decision, it can be concluded that the relevant geographic market is Sweden.

C. Assessment

12. According to the notification, the two largest electricity producers on the Swedish electricity market are Vattenfall and Sydkraft who, in 1997, had market shares of 51% and 20% respectively on the Swedish electricity market. The combined market share of the parties was at the same time [³]. Three smaller producers, Stora Kraft AB, Skellefteå Kraft and Granninge each had a market share <5%, with a number of very small producers making up the balance.
13. Both Vattenfall and Sydkraft are vertically integrated, owning significant electricity production capacity and distribution networks. Vattenfall is the clear market leader in producing both hydropower and nuclear power, the two main types of power generation in Sweden. Vattenfall's share of the production capacity was >50% in both hydropower and nuclear. Sydkraft is the second strongest player with approximately 25% of the nuclear power and 15% of the hydropower production capacity. The parties' combined share of the nuclear power capacity is [³] and a hydropower production capacity [³].
14. The notified operation is, according to the parties, necessary to enable the companies to compete effectively with Vattenfall and Sydkraft in the Swedish electricity market. The concentration will, indeed, create a third electricity supplier with a better ability to compete effectively with the two main players.
15. Based on the above and in view of the market position of the parties and their main competitors, the Commission considers that the operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or any substantial part of that area.

V. ANCILLARY RESTRICTION

16. Article 20 of the Shareholders' Agreement between IVO and Stadshuset contains a non-competition clause by which the parties undertake not to compete with Birka Energi. This clause expresses their lasting withdrawal from the markets of the joint venture and should therefore, as long as joint control over Birka Energi is maintained, be regarded as an integral part of the concentration.

VI. CONCLUSION

³ Deleted for publication, < 15%.

17. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 and Article 57 of the EEA Agreement.

For the Commission