

***Case No IV/M.1573 -
NORSK HYDRO /
SAGA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/1999

*Also available in the CELEX database
Document No 399M1573*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.07.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sirs,

Subject: Case No IV/M.1573 – Norsk Hydro/Saga

Notification of 4 June 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 4 June 1999, Norsk Hydro ASA notified its intention to acquire sole control over Saga Petroleum ASA (“Saga”) by way of a public bid.

THE PARTIES AND THE OPERATION

2. Norsk Hydro is a Norwegian-based group with core activities in petroleum and energy, light metals, agriculture and petrochemicals. In the petroleum sector Hydro is involved in exploration, production, transportation and the refining and marketing of petroleum and petroleum products. Norsk Hydro is 51% owned by the Norwegian State. Following the merger, the State’s ownership will be reduced, at least in an initial phase, to 43.4%.
3. Saga is a privately owned Norwegian upstream oil and gas company, involved in exploration, production and transportation of oil and gas. Its main centre of activity is on the UK and Norwegian Continental Shelf. The largest shareholder in Saga is Statoil with 20%. Statoil is 100% owned by the Norwegian State.
4. The concentration being notified is an acquisition of sole control of Saga by Norsk Hydro. The transaction was effected by way of a public bid for an exchange of shares launched on 10/6/1999. The Norsk Hydro public bid was successfully completed on 18/6/1999 after receipt of acceptances representing more than 70% of Saga's shareholdings other than those held by Statoil.
5. The public bid was made jointly by Norsk Hydro and Statoil, although Statoil is not a notifying party. This is in view of an agreement between Norsk Hydro and Statoil. Statoil will not receive shares in Norsk Hydro in return for its shares in Saga and will not

accept the exchange offer. Instead, Statoil will acquire certain oil and gas properties currently owned by Saga for a price of NOK 7,200 million plus an amount corresponding to 24.66% of the aggregate value of any cash consideration actually paid to the Saga shareholders. Statoil's Saga shares will be used as partial payment for the properties according to a valuation of the market price of the shares. The balance will be paid in cash by Statoil. Another feature of the Statoil – Norsk Hydro agreement is that Statoil would not support any other possible bid on Saga.

CONCENTRATION

6. The transaction, involving Norsk Hydro as a bidder and Saga as a target, is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.
7. This does not change in view of Statoil joining the bid as the joint bid contemplates the immediate de-merger of the identified Saga assets. The Statoil acquisition of the Saga assets therefore constitutes a separate transaction.

COMMUNITY DIMENSION

8. In calculating the turnover of Saga for the purposes of this concentration, only the turnover of the Saga assets that remain with Norsk-Hydro is taken into account. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 2 500 million. The aggregate Community-wide turnover of each party exceeds EUR 250 million (Norsk Hydro 7 411 million; Saga 304 million). They do not achieve more than two-thirds of their turnover in one and the same Member State. Therefore, the concentration has community dimension. The concentration is an ESA co-operation case as both companies have a turnover in excess of EUR 250 million in Norway.

THE RELEVANT MARKETS

Relevant product markets

9. The parties have overlapping activities with regard to exploration, production and marketing of the crude oil, natural gas and natural liquefied gas (NLG) as well as in the provision of transportation services of these products.
10. In line with existing case law¹, exploration, production and sale of crude oil constitutes a distinct market from the exploration, production and sale of natural gas. It may be argued that exploration (for crude oil and natural gas), on the one hand, and production and sale (of crude oil and natural gas), on the other, constitute distinct markets. It can also be argued that the natural gas market should be further split into a High Calorific Value (“HCV”) and a Low Calorific Value (“LCV”) gas market. However, as the operation does not raise serious doubts as to its compatibility with the common market whatever definition is retained, it is not necessary to further delineate the relevant product markets.
11. NLG constitutes a distinct product market. NLG is a by-product of oil and gas production with higher carbon density than methane. NLG combines ethane, propane, butane and condensate. NLG can be considered as one product market in view of the considerable supply side substitutability.

¹ Case IV/M.1200 – ARCO/Union Texas.

12. The transport of unprocessed gas through pipelines linking the gas fields with the necessary (off- and on-shore) processing facilities and the processing facilities itself are essential requirements to be able to sell pipeline quality gas. Such facilities will, therefore, be constructed in parallel when taking a gas field into production. The equity interests and capacity rights are, therefore, often linked to the equity interests in the field that needs to be developed. It is, therefore, often argued that such facilities do not constitute distinct markets.
13. However, there are numerous Third Party Access (TPA) agreements that are concluded between the owners of a new gas field and the owners of an existing facility. Whenever an existing facility has free capacity (e.g. when the field is no longer operating at its maximum output) or when the costs for an increase in capacity can be profitably set off against the TPA-tariff income, and when such a tariff is lower than the alternatives (constructing an own facility), TPA agreements are concluded. Such agreements are a widespread practice as illustrated by reference to the estimate that around 50% of the throughput in the pipelines and processing facilities on the Southern North Sea sector of the UK Continental Shelf is third party gas.² It can therefore be concluded that transport pipelines for unprocessed gas and gas processing facilities constitute distinct product markets.
14. Although crude oil is mainly transported by ship, transportation of crude oil by pipeline can be considered, for the same reason as indicated above, as a distinct product market. NGL is transported by ship. Norsk Hydro and Saga have virtually no interests in (oil and NGL) ship transportation.

Relevant geographic market

15. In previous cases³, the Commission has defined the market for the exploration, production and sale of crude oil as world-wide. The market for the exploration, production and sale of natural gas is, from a European demand perspective, limited to the production of (HCV⁴) EEA, Russian and Algerian gas for sale in the EEA. This is due to the logistic constraints of pipeline transportation. However, it can be argued that the market may be more limited in view of the distinct gas specifications in the different production countries, the existing infrastructure and the related cost of transport (i.e. there are currently no Algerian gas supplies to Germany). However, it is not necessary to decide this issue as even on the smallest possible market, i.e. the production and sale of Norwegian gas, the concentration would not lead to a creation or strengthening of a dominant position.
16. The parties consider that the NLG market contains at least the EEA in view of the limited transport costs and the high correlation in prices throughout Western Europe. The investigation has confirmed that contention.
17. It appears that the Norwegian gas pipelines could be distinguished in a Northern North Sea (NNS) and a Southern North Sea (SNS) sector of the Norwegian Continental Shelf.

² Third party gas defined as production from fields that, subsequent to the entry into service of the pipelines, use these facilities even if those subsequent fields compromise some or all of the original owners of the original field.

³ Cases IV/M.085 – Elf/Occidental and IV/M.1200 – ARCO/Union Texas.

⁴ The parties are not active on the LCV production market.

Another distinction relates to the pipelines going to a particular landing point (in the UK, Germany, Belgium or France). However, it is not necessary to decide this issue as the merged entity would, in view of the voting rights in the pipelines in which it has an interest, not acquire a blocking right with regard to third party access in a single pipeline in which it has interests. The same conclusion can be made, for the same reason, with regard to the gas processing facilities and the oil pipelines.

ASSESSMENT

18. On none of the markets where the Norsk Hydro and Saga are active does the concentration lead to a creation or a strengthening of a dominant position for the reasons indicated below.
19. Taking into account the total oil production of Saga, the combined entity would account for [less than 10%] of OECD crude oil production and [less than 5%] of world-wide production.
20. With regard to gas, the combined entity would account for [less than 5%] of gas consumed in the EEA. It can be noted that [...] in [all the individual EEA countries] will the market share [be less than 10%] and the gas produced by the merged entity accounts for less than [25%] of Norwegian gas production.
21. On the NLG market in the EEA, the combined entity has a market share of [less than 5%].
22. As indicated above, in none of the gas pipelines, gas processing facilities and oil pipelines does the combined equity share of Norsk Hydro and Saga give the merged entity a blocking right with regard to third party access. It is noted that the owners' agreement for one pipeline (the Norne Gasseksport pipeline where the equity share of the merged entity is 17.12%) is not yet concluded. However, even assuming that the parties would acquire a blocking right on this pipeline, this would not give rise to a creation or a strengthening of a dominant position in view of the competition from other pipelines (where the merged entity has no blocking rights).

CONCLUSION

23. 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 and Article 57 of the EEA Agreement.

For the Commission,