

***Case No COMP/M.2015 -  
TOTALFINA /  
SAARBERG / MMH***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 31/08/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.08.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2015-Totalfina/Saarberg/MMH**

Notification of 28.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 28.07.2000, the German undertakings TOTALFINA Deutschland GmbH (TFD) and Saarberg AG notified a proposed concentration by which TFD acquires within the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89 joint control of the German undertaking Michel Mineralölhandel GmbH (MMH) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

**I. THE PARTIES AND THE OPERATION**

3. TFD is the German subsidiary of the French TOTAL FINA ELF (TFE) group, one of the leading European groups of mineral oil industries.
4. Saarberg AG is part of the RAG group. Its activities include i.a. the distribution of mineral oil products through its subsidiary Saarberg Handel GmbH (SH) and the subsidiaries of SH, MMH and Total Mineralölvertrieb GmbH (TMV), a joint venture of SH and TFD.
5. MMH and TMV are active in the trading of fuels and lubricants in certain parts of Western Germany to end-users and resellers, selling their products through non-retail distribution channels.
6. TFD and Saarberg AG will have joint control, since each of them will hold 50% of the voting rights. Strategic decisions will be taken by simple majority.

## **II. CONCENTRATION**

7. The acquisition by TFD of joint control of MMH constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation No. 4064/89.
8. MMH performs the functions normally carried out by undertakings operating on the same markets. There is a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets – tangible as well as intangible - in order to conduct on a lasting basis its business activities within the area provided for in the joint-venture agreement.

## **III. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world wide turnover of more than EUR 5 billion <sup>1</sup> (TFE: EUR 75,035 million; RAG: EUR 13,650 million). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (EUR [...] million for TFE and EUR [...] million for RAG), 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.
10. It does not constitute a co-operation case under the EEA agreement.

## **IV. MARKETS**

11. With regard to the sale of refined oil products, the Commission has in prior cases distinguished between products sold retail through the supplier's own distribution network and products sold through non-retail distribution channels (off-network sales)<sup>2</sup>. The Commission has further defined each refined product as a distinct product market<sup>3</sup> since there is no demand-side substitutability and on the supply side it is not easy to adapt the production system to change from one product to another.
12. The parties consider that the non-retail markets are at least national in scope (gasoline, diesel, light heating fuel, automotive lubricants) if not EEA-wide (industrial lubricants, heavy fuel).
13. As the operation does not raise any competition concerns even with regard to regional markets, it is not necessary to define the scope of the relevant geographic market more precisely in the present case.

## **V. COMPATIBILITY WITH THE COMMON MARKET**

14. The strongest competitors of TFD/MMH in the non-retail business are national subsidiaries of the leading international groups of mineral oil industries: Veba Oel, DEA, Deutsche BP, Esso Deutschland and Deutsche Shell. On the basis of national non-retail markets there is only an increase of market shares of less than [0-10]% in the markets of gasoline, diesel and heating fuel and less than [0-10]% in the markets of automotive lubricants, industrial lubricants and heavy fuel. Only in the market of heating fuel TFD/MMH will reach the highest market share of about [15-25]%, the next competitor having a market share of about [15-25]%. In the markets of automotive

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Council Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>2</sup> Commission Decision Exxon / Mobil, Case IV/M.1383, para 438.

<sup>3</sup> Commission Decision TotalFina / Elf, Case COMP/M. 1628, para.27.

gasoline and diesel the merged entity will have market shares of [10-20]%. In the second three mentioned markets, the merged entity will have market shares between [5-20]%

15. On the basis of regional markets of automotive gasoline, diesel and heating fuel in the two Bundeslaender Baden-Wuerttemberg and Nordrhein-Westfalen there are the biggest overlaps. However, in no case will TFD/MMH reach a share significantly higher than those of one or more of the above mentioned competitors. In NRW in none of the three markets will TFD/MMH reach the leading position, which means market shares about [15-25]%. In Baden-Wuerttemberg TFD has already the leading position in the heating fuel market and will reach now a market share of about [15-25]%. The next three competitors have market shares between [15-25]%, so that the combined entity will face significant competition. In the Diesel market TFD/MMH will reach a market share of [20-30]%, followed by two competitors with market shares of [20-30]%. Although the combined entity will have the highest market shares in these markets, the absolute level of its market share falls short of what is necessary to establish dominance.
16. Consequently, the proposed concentration does not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market and the EEA or a substantial part thereof.

## **VI. CONCLUSION**

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

For the Commission,  
Signed by G. VERHEUGEN,  
Member of the Commission