

***Case No COMP/M.2335 -
MICHEL
MINERALÖLHANDEL /
THYSSEN-ELF OIL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/02/2001

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.02.2001
SG(2000)D/286530

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M.2335 – MICHEL MINERALÖLHANDEL / THYSSEN-ELF OIL

Notification of 31.01.2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 31.01.2001 the German undertaking Michel Mineralölhandel GmbH (“MMH”) notified its intention to acquire control of parts of the German based Thyssen-Elf Oil GmbH (“TEO”).
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.

¹ OJ L 395, 30.12.1989 p.1; corrigendum OJ L 257 of 21.9.1990, p.13, last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p.1, corrigendum OJ L 40, 13.2.1998, p.17).

I. THE PARTIES AND THE OPERATION

3. MMH is jointly controlled by TotalFinaElf Deutschland GmbH (“TFED”) and Saarberg Handel AG (“SH”). TFED is a subsidiary of the TotalFinaElf group, one of the leading European groups of mineral oil industries. SH is a subsidiary of RAG Saarberg AG (“RSAG”) that is part of the RAG group. The activities of RSAG include i.a. the distribution of mineral oil products through its direct and indirect subsidiaries.
4. MMH is active in trading of refined mineral oil products including gasoline, diesel, heating fuel and lubricants in certain parts of Western Germany.
5. The TEO sales offices are active in the sale of gasoline, diesel and light heating oil in some regions of Germany outside the network of branded service stations. Moreover, the sales office Stuttgart is active in the trading of gas oil and the sales office Essen also sells lubricants and heavy fuel.
6. The acquisition will be effected by the way of purchase of assets, i.e. the sales offices in Stuttgart and Essen including all facilities and activities and the respective customer bases.

II. CONCENTRATION

7. The acquisition by MMH of control of parts of TEO constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation No. 4064/89.

III. COMMUNITY DIMENSION

8. The undertakings concerned generate a combined aggregate world-wide turnover of more than EUR 5 billion². Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 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.
9. It does not constitute a co-operation case under the EEA agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

10. In a previous transaction which was cleared by the Commission on 31.08.2000 (Case M.2015 - Totalfina/Saarberg/MMH), TFED (formerly TotalFina Deutschland GmbH

² 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.

[“TFD”]) acquired joint control of MMH by purchase of 50% of the shares of MMH from SH. In the assessment of the case the Commission took already into account the activities of TEO on TFD side because TEO is jointly controlled by TotalFinaElf group and Thyssen-Krupp group. After the transfer of the TEO sales in Stuttgart und Essen to MMH, TotalFinaElf will continue to exert joint control over these TEO activities, now mediated through its shareholding in MMH. The only new element is that instead of Thyssen Krupp group, RSAG group will - again mediated through MMH - exert joint control over these TEO activities together with TotalFina Elf Group. Overlaps between RSAG’s and MMH activities only occur on the German market for Diesel and light heating oil. However, the addition of market shares is only marginal and the combined market shares will remain considerably below 10%.

11. 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.

V. CONCLUSION

12. 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,
Signed by Mario MONTI, (*Member of
the Commission*)