

***Case No COMP/M.2349 -
E.ON / SYDKRAFT***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/04/2001

*Also available in the CELEX database
Document No 301M2349*



Brussels, 09/04/2001
SG (2001) D/287616

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2349 – E.ON/SYDKRAFT

Notification of 06 March 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 6 March 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the undertaking E.ON Energie (Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Sydkraft AB (Sweden) 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 (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. E.ON is a German energy company. Its activities focus on Germany and include primarily electricity generation and distribution as well as natural gas, heating, waste management, construction and broad-band operations.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as 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).

4. Sydkraft is an energy supplier primarily active in electricity generation and distribution. The undertaking sells its products mainly in Sweden and to a minor extent in other Nordic and certain Baltic countries.
5. The transaction involves the acquisition by E.ON of the majority of votes in Sydkraft. E.ON already held a share of 42.8% of the votes in Sydkraft, the other shareholders being Statkraft (28,8% of the votes), municipalities (18.5% of the votes) and various private and institutional investors (approx 7%). In order to assume control of Sydkraft, E.ON intends to acquire additional 3.8% of the votes from several Swedish municipalities and additional shares from private and institutional investors (representing approx 7% of the votes) by launching a public tender offer. These operations will give E.ON sole control over Sydkraft. Therefore, the operation constitutes a concentration within the meaning of Article 3 (1) (b).
6. It should also be noted that E.ON also intends to acquire additional 2,6% of the votes from the German HEW in exchange for shares in VEAG AG and LAUBAG AG to be sold by E.ON as a result of the VEBA/VIAG merger². The acquisition of this 2.6% interest will become effective at the date of the closing according to the VEBA-LAUBAG purchase agreement.

II. COMMUNITY DIMENSION

7. The undertakings E.ON and Sydkraft have a combined aggregate worldwide turnover in excess of EUR 5,000 million³ (E.ON: EUR [...]; Sydkraft : EUR [...]). Each of them has a Community-wide turnover in excess of EUR 250 million (E.ON: EUR [...]; Sydkraft : EUR [...]). 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.

III. COMPETITIVE ASSESSMENT

8. According to the notifying party, the transaction will not bring about any affected markets. However, since the activities of the parties overlap with regard to electricity, the assessment below will focus on this sector. Moreover, as E.ON and Sydkraft only have significant activities in Germany and Sweden respectively, the assessment will also focus on these two countries. It should be noted that in these two States, the electricity markets are fully open for all customers.

A. Relevant product markets

9. The notifying party has submitted that the production, transmission, distribution and supply of electricity are the relevant product markets.

² Case n°COMP/M. 1673 – VEBA/VIAG. Decision of 13 June 2000.

³ Turnover calculated in accordance with Article 5(1) of the Merger 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.

10. As far as the Swedish market is concerned, the Commission has considered the electricity sector in several recent decisions⁴. 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.
11. As far as Germany is concerned, the Commission has noted, in its VEBA/VIAG decision⁵, that the electricity sector in Germany is subdivided vertically into national interconnected companies, regional power supply companies (regional suppliers) and local distributor companies (in particular municipal electricity undertakings). The Commission has observed that the power supplied at interconnected level forms a separate market in view of the characteristics of the product (i.e. the voltage level) and of the specific customer groups interested in it. It comprises (in Germany) the generation of power at interconnected level and electricity imports, which are delivered over extra high voltage and high voltage lines to different customer groups, such as regional distributors, the larger municipal electricity undertakings, electricity traders and large industrial special customers.

B. Relevant geographic market

12. According to previous recent Commission's decision, the electricity markets in the Nordic countries can be considered as remaining essentially national in scope. In view of the restrictions that still apply to cross-border trade of electricity, Sweden can thus be considered as a relevant geographic market.
13. As regards Germany, the Commission has considered in its recent VEBA/VIAG decision⁶ that the market for the supply of electricity at interconnected level could cover the entire territory of the Federal Republic of Germany. In the VEBA/VIAG case, the Commission's investigations have shown that the market for this market is not supranational due, notably, to the fact that the capacity of the interconnectors, i.e. the network links with neighbouring countries, is limited and that therefore, for technical reasons, imports are low. The Commission has also founded signs that the market will not be smaller than national in the foreseeable future. Therefore, the Commission took the view that the market for the supply of electricity at the interconnected level in Germany will develop into a national market in the near future. The same considerations are still valid in the present case.

C. Assessment

14. The proposed operation will not lead to any modification in the structure of the markets concerned.
15. In Sweden and Germany respectively, the activities of Sydkraft and E.ON do not lead to any overlap (E.ON is not active in Sweden and Sydkraft is not active in Germany).

⁴ IV/M.1169 – EDFI/Graninge and IV/M.1231 – IVO / Stockholm Energi

⁵ Case n°COMP/M. 1673 – VEBA/VIAG. Para. 11 to 19.

⁶ Case n°COMP/M. 1673 – VEBA/VIAG. Para. 20 to 46.

16. The three largest Swedish electricity producers are Vattenfall, Sydkraft and Birka who, in 1999, had shares of 53%, 19% and 16% respectively of all electricity generated in Sweden. Two smaller producers, Fortum and Gräninge each had shares of <5%, with a number of very small producers making up the balance. As the Swedish electricity market is fully liberalised, the shares in terms of electricity supply are similar. As already stated, E.ON is not active in Sweden.
17. In the German market for power supply at interconnected level, E.ON had a share of around 35% in 1999. The other competitors include RWE/VEW, VEAG and EdF/EnBW with shares of 38%, 12% and 10% respectively. As already mentioned, Sydkraft is not active in Germany. Moreover, as far as Sydkraft might have been considered as a potential competitive entrant in the German market, it should be noted that the interconnection capacities between Sweden and Germany are still very limited. Furthermore, Sydkraft has no access to generation capacity situated in Germany. There is an important number of strong electricity producers in Europe who can be seen as potential acquirers of generation capacity in Germany.
18. For the same reasons, no competition concerns would arise with respect to other possible electricity supply markets in Germany.
19. Based on the above, 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.

IV. CONCLUSION

20. 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,
Mario Monti
Member of the Commission**