

***Case No COMP/M.2659 -
FORTUM / BIRKA
ENERGI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/01/2002

*Also available in the CELEX database
Document No 302M2659*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10/01/2002

SG (2001) D/228106

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

Subject: Case No COMP/M.2659 – FORTUM/BIRKA ENERGI
Notification of 29.11.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 29.11.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”), whereby Fortum Oyj (“Fortum”), Finland, intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the electricity business and other related businesses of the Swedish company Birka Energi AB (“the Electricity Business), which is currently jointly controlled by Fortum and the City of Stockholm.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Fortum is a Finnish based energy company active in the Nordic area in generation, sales and distribution of electricity, district heating and industrial heat and steam as well as operation and maintenance and engineering. The company has further activities in production, refining and marketing of oil and gas. The State of Finland is the main shareholder with approximately 71% share of the company. In addition to its participation

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).

in Birka Energi AB, Fortum has some activities² in the Swedish electricity market and it provides sales of electricity to small and medium sized customer³ as well as district heating⁴ in Sweden. Fortum has also some gas and oil related activities in Sweden.

4. Birka Energi AB, which is a 50:50 joint venture between Fortum and the City of Stockholm, was formed in 1998⁵. The company is active in generation, sales and distribution of electricity and district heating, district cooling and city gas⁶ in Sweden as well as installation, operation and maintenance of energy plants in Sweden, technical consultation services and proprietary trading in energy. The company is also to a limited extent active in district heating in Norway.
5. Subject to the transaction are the electricity business and other related businesses such as operation, maintenance and technical consulting service of Birka Energi AB as well as the heating business in Norway (together the “Electricity Business”). The Swedish district heating and cooling businesses and the city gas business will continue to be jointly controlled by Fortum and the City of Stockholm.

II. THE OPERATION AND THE CONCENTRATION

6. The notified operation would result in the change of control of the Electricity Business from joint control by Fortum and the City of Stockholm to sole control by Fortum. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Fortum EUR [...] million and Birka Electricity Business [...] million in 2000)⁷. Each of Fortum and the Electricity Business have a Community-wide turnover in excess of EUR 250 million (Fortum EUR [...] million and the Electricity Business EUR [...] million in 2000), 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. It does not constitute a co-operation case under the EEA Agreement.

² Subsidiary Fortum Kraft AB, decision by the Swedish Competition Authority of 25 May 2000, decision no 438/2000.

³ Kinnekulle Energi AB (owned 67% by Fortum) and Karlskoga Energi AB (owned 49% by Fortum).

⁴ Nynäshamn Värme AB (100% owned by Fortum).

⁵ See Commission’s decision of 5 August 1988 in case COMP/M.1232 - IVO/Stockholms Energi.

⁶ Stockholm area.

⁷ 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product and geographic markets

8. The notifying party considers it appropriate, and in line with the Commission's previous practice, to distinguish between the following electricity activities: *generation, transmission and distribution, bulk sales* of electricity to the Nordpool and to large customers and *small customer sales* to residential customers and small and medium sized companies. The parties submit that there exists some minor overlapping activities between Fortum and the Electricity Business in generation and bulk sales of electricity and identify as affected markets: (i) generation of electricity; (ii) sales of electricity to small and medium sized customers⁸; and (iii) distribution of electricity. There appears to be no reasons in this particular case to deviate from the Commission's previous practice⁹.
9. The Commission has in its previous decisions¹⁰ held that the Swedish and the Finnish electricity markets are national in scope. The notifying party points out, however, that there have been significant developments in the Nordic region following the adoption of the latest Commission's decisions relating to these markets. For instance, cross-border transmission charges have been abolished and electricity producers are no longer obliged to keep certain levels of back-up capacity. According to Fortum, there is a common Nordic electricity market and it is characterised by the absence of significant and persistent price differences.

Market for bulk sales of electricity

10. Fortum considers that the Swedish market for bulk sales has become a part of a wider geographic market comprising also Norway, Finland and Denmark ("Nordic countries). In view of the notifying party, the Nordic countries form a technically integrated power system through inter-connectors between the national high-voltage transmission networks and a commercially integrated market for bulk trade through Nordpool¹¹, the common Nordic electricity exchange. The notifying party claims that a substantial and increasing share of total Nordic electricity consumption is traded via "Elspot", the daily physical market. In 2000, the share of total Nordic consumption traded via Nordpool was 25%. It is estimated to increase to 30% in 2001. It appears, however, not necessary to exactly define the relevant geographic market for bulk sales since, it seems that all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Market for small and medium sized customer sales of electricity

11. As far as the market for small and medium sized customer sales is concerned, the notifying party considers this to continue to be a national market, since such customers do not

⁸ Customers connected to local network (voltage level of less than 20kV) with an annual consumption between 1,000 kWh and 10-20 GWh.

⁹ See for instance, case COMP/M.1673 – VEBA/VIAG, 13.06.2000.

¹⁰ See above case No. IV/M.1231 – IVO/Stockholms Energi and Commission decision of 2 June 1998 in case No. IV/M.931 Neste/IVO.

¹¹ Nordpool commenced its operation in 1993 comprising first only Norway. Sweden joined Nordpool in 1996, Finland in 1998 and Denmark in 2000.

commonly purchase electricity from suppliers that are not present in the purchaser's country. It appears, however, not necessary to exactly define the relevant geographic market for small and medium sized customer sales since, it seems that all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Market for distribution of electricity

12. It is the view of the notifying party that distribution of electricity are "natural monopolies" covering the area within which the network is situated. It appears, however, not necessary to exactly define the relevant geographic market for small and medium sized customer sales since, it seems that all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Assessment

13. The proposed transaction would result in the change of control of the Electricity Business from joint control by Fortum and the City of Stockholm to sole control by Fortum. It appears that the acquisition of sole control of the Electricity Business would not strengthen Fortum's position in the electricity markets in question to such an extent as to create or strengthen a dominant position under all alternative market definitions. Nevertheless, Fortum combined with the Electricity Business is the second largest electricity producer in the Nordic region in terms of production, consumption and capacity. The combined entity will be the third largest producer of electricity in Sweden and the largest in sales to small and medium sized customers.
14. In the market for generation of electricity, Fortum and the Electricity Business would obtain a combined market share of [10-20]% (Fortum [0-10]% and the Electricity Business [10-20]%) in Sweden and [10-20]% in the Nordic countries (Fortum [0-10]% and the Electricity Business [0-10]%), measured both in terms of generation and consumption of electricity. In terms of capacity, the combined entity will obtain a market share of [10-20]% in Sweden (Fortum [0-10]% and the Electricity Business [10-20]%) and [10-20]% in the Nordic countries (Fortum [0-10]% and the Electricity Business [0-10]%).
15. The two largest electricity producers on the Swedish electricity markets are Vattenfall and Sydkraft. Their market shares have been indicated as [40-50]% and [10-20]% in terms of generation ([40-50]% and [10-20]% of consumption and [40-50]% and [10-20]% of capacity respectively). The third largest competitor is Stora Enso with [0-10]% of the market (both generation and consumption).
16. Should the market be defined as a Nordic market, the major competitors include Vattenfall with a market share of [10-20]%, Statkraft with [0-10]%, Sydkraft [0-10]% and Pohjolan Voima [0-10]%, respectively both in terms of generation and consumption of electricity. As regards the electricity generation capacity, Vattenfall has a market share of [10-20]%, Statkraft [0-10]%, Sydkraft [0-10]% and Energi E2 [0-10]% of the Nordic market.
17. In the market for sales of electricity to small and medium sized customers, the combined entity would become the market leader in Sweden with a market share of [10-20]% (Fortum [0-10]% and the Electricity Business [10-20]%). The new entity would have some

[...] customers. The largest competitors include Vattenfall with an approximate market share of [10-20]% in Sweden, Sydkraft with [10-20]%, PlusEnergi¹² with [0-10]%, Granninge with [0-10]% and Östkraft with some [0-10]% market shares, respectively. The proposed operation does not change anything in reality since Fortum would only bring a market share of [0-10]% to the new combined entity. In addition, in assessing the effect of the operation on small and medium sized customers, it should be noted that Swedish legislation allows customers to change electricity supplier without any penalty following a notice period of one month.

18. In the market for electricity distribution in Sweden, the combined entity would hold a market share of [10-20]% (Fortum [0-10]% and the Electricity Business [10-20]%) with Vattenfall holding [20-30]% and Sydkraft [10-20]% respectively.

V. CONCLUSION

19. 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 Mario MONTI,
Member of the Commission

¹² Owned by Vattenfall and Göteborg Energi (50%/50%).