

***Case No COMP/M.2735 -  
TOTALFINAELF  
DEUTSCHLAND / MMH  
/ TSG / EMB***

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: 17/04/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 17.04.2002  
SG (2002) D/229424

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2735 - Totalfinaelf Deutschland/MMH/TSB/EMB  
Notification of 14.3.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 14.3.2002 the Commission received the notification of a proposed transaction by which Totalfinaelf Deutschland acquires sole control of the undertakings Michel Mineralölhandel (MMH), Germany, Total Saarberg (TSG), Germany, and ELF Mineralöl Berlin (EMB). Currently the target companies are jointly controlled by Totalfinaelf Deutschland and Saarberg Handel GmbH, a subsidiary of RAG Saarberg AG which in turn is part of RAG AG. RAG AG intends to withdraw entirely from all mineral oil-related activities.

## I. THE PARTIES

2. Totalfinaelf Deutschland is the German subsidiary of the French TOTAL FINA ELF group, one of the leading European groups in the mineral oil industry. TOTAL FINA ELF operates refineries and service stations in more than 100 countries, primarily in Africa and Europa. Totalfinaelf Deutschland's operations includes the majority of the activities of its ultimate parent company to the extent that they relate to Germany including the non-retail sale of gasoline, diesel heating oil (light heating oil and heavy fuel) and lubricants. It is also engaged in some gasoil trading in the ARA(Amsterdam, Rotterdam, Antwerpen)-zone.
3. MMH, TSG and EMB are active in the non-retail sale of refined mineral oil products - including gasoline, diesel, heating fuel (light and heavy) and lubricants - in Germany. These products are supplied through a network of sales offices to end-users (households,

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<sup>1</sup> 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).

businesses and public authorities). MMH is also active in gasoil trading in the ARA-zone.

## **II. THE OPERATION**

4. Totalfinaelf Deutschland holds currently 50% of the target companies. The other 50% are held by Saarberg Handel GmbH. Totalfinaelf Deutschland intends to acquire all shares of the MMH, TSG and EMB and to exercise control over these companies. This initiative follows an announcement of RAG AG to withdraw entirely from all mineral oil-related activities.

## **III. COMMUNITY DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of the undertakings 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.

## **IV. ASSESSMENT**

6. In previous decisions the Commission distinguished between products sold retail through the suppliers' own distribution network and products sold through non-retail distribution channels (off-network sales)<sup>3</sup>. Moreover, the Commission defined each refined mineral oil product as a separate market<sup>4</sup>. There are no indications that this market delineation is not valid any more. In line with this market definition the proposed transaction concerns the non-retail markets for sale of gasoline, diesel, heating fuel (light and heavy) lubricants and gasoil.
7. The parties suggest a German wide market for diesel, light heating oil and gasoline, an EEA-wide market for heavy fuel, an at least national wide market for lubricants and the ARA-zone for gasoil. However, for diesel and light heating oil, the parties have also provided figures for regional markets in Germany. The exact delineation of the geographic markets can be left open, as - in any event - the proposed transaction does not give rise to competition concerns.
8. The proposed transaction is a restructuring that has no effect on market shares. The cumulated market shares are not significantly different from those that were calculated in the Commission's decision M.2015 - Totalfina/Saarberg/MMH of 31.8.2000. This decision concerned the acquisition of joint control of Totalfina Deutschland over MMH. The calculation of marketshares of Totalfinaelf Deutschland after the merger contained the marketshares of EMB and TSG. Compared to the market situation at the time of the decision M.2015 the market shares of the parties have decreased slightly.

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<sup>2</sup> 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.

<sup>3</sup> M.1383 - Exxon/Mobil, 26.7.1999; M.2015 - Totalfina/Saarberg/MMG, 31.8.2000

<sup>4</sup> M.1628 - Totalfina/ELF Aquitaine, 26.11.1999

9. In any event, given the modest level of the combined market shares, even the acquisition by Totalfinaelf Deutschland of *ex novo* sole control over the target companies would not have given rise to competition concerns: The parties identified two affected markets: diesel ([10-20]%) and light heating oil ([10-20]%). They claim that market shares would even be lower if sales to resellers were deducted. On a regional level referring to the German Länder market shares remain below 25%. With regard to the other product markets market shares remain below 15%. On each of the possibly affected markets, strong competitors exist.

## **V. CONCLUSION**

11. 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  
Mario MONTI  
Member of the Commission