

***Case No COMP/M.2897 -  
SITA SVERIGE AB /  
SYDKRAFT ECOPLUS***

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: 14/10/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.10.2002

SG (2002) D/232131

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2897 - SITA Sverige AB and Sydkraft Ecoplus AB  
Notification of 11.09.2002 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

- (1) On 11 September 2002 the Commission received a notification of a proposed concentration pursuant to article 4 of the Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which the undertakings SITA SA ("SITA") and Sydkraft AB ("Sydkraft") acquire joint control of the undertaking SITA Sverige AB ("SITA Sverige"), previously controlled solely by SITA, by way of a shareholders agreement (the "SITA Sverige concentration"). Simultaneously, the undertakings SITA Sverige and Sydkraft acquire joint control of the undertaking Sydkraft Ecoplus AB ("Ecoplus"), previously solely controlled by the undertaking Sydkraft, by means of purchase of shares and shareholders agreement (the "Ecoplus concentration").
- (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 with the EEA Agreement.

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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).

## **I. THE PARTIES**

- (3) Sydkraft is solely controlled by the German E.ON group, a vertically integrated energy supplier primarily active in electricity generation, distribution and sales in Germany and the UK. Through its subsidiaries (including Ecoplus) Sydkraft is also active in the energy and waste sectors in Sweden.
- (4) Ecoplus is a wholly-owned subsidiary of Sydkraft and its current operations are limited to a so-called waste-to-energy facility in the Swedish municipality of Mora where it incinerates non-hazardous waste for the production of heat to the local district-heating network.
- (5) SITA provides waste collection and treatment services in a number of countries worldwide. SITA is a wholly owned subsidiary within the French Suez Lyonnaise group which is mainly active in the energy, water, waste management and communication sectors. SITA is active in Sweden nearly exclusively through SITA Sverige, disregarding other insignificant marginal operations.
- (6) SITA Sverige is active in the waste management sector in Sweden and is under sole control by SITA.

## **II. THE OPERATION**

- (7) The Parties submit that the SITA Sverige concentration and the Ecoplus concentration are legally and commercially interdependent in the sense that one cannot occur without the other. Therefore, the two transactions are notified under the Merger Regulation and for the purpose of this decision treated under a single notification procedure and are hereafter referred to as "the operation".

## **III. CONCENTRATION**

- (8) Pursuant to the proposed operation, the Parties will acquire joint control within the meaning of Article 3(1)(b) of the Council Regulation of the two full-function joint ventures (SITA Sverige and Ecoplus), both active exclusively in Sweden. It is submitted that SITA Sverige and Ecoplus will perform on a permanent basis all the functions of autonomous entities.

## **IV. COMMUNITY DIMENSION**

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion<sup>2</sup> in 2001 (E.ON group: € [...] million; Suez Lyonnaise group; € [...]). Each of them have a Community-wide turnover in excess of € 250 million (E.ON group: € [...] million; Suez Lyonnaise group: € [...] 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.

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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.

## V. RELEVANT MARKET DEFINITIONS

- (10) In previous decisions<sup>3</sup>, regarding the waste management sector, the Commission has distinguished between ordinary waste and hazardous waste. Within each of the two categories of waste, previous decisions have also distinguished between collection and disposal/treatment. On this basis, the parties submit that the 7 product market definitions are relevant. Four pertain to the waste management sector: a) collection of ordinary waste (with a possible split between household and industrial/commercial waste); b) disposal of ordinary waste; c) collection/transportation of hazardous waste d) intermediate storage of hazardous waste (special industrial waste, SIW); e) treatment of hazardous waste (SIW). The remaining two are: f) operation of district heating; g) production of heat for district heating.

### *Ordinary waste*

- (11) Collection: in previous decisions<sup>4</sup> the Commission has considered the possibility of two distinct product markets: the collection of ordinary household waste and the collection of ordinary industrial and commercial waste. The parties submit that these two distinct segments could be regarded as belonging to the same product market, given that the major waste companies in Sweden are active in both segments for reasons of economies of scale. This question can nevertheless be left open, as under neither alternative definition would effective competition be significantly impeded. In line with previous Commission decisions, the parties submit that the relevant geographic market for collection of ordinary waste is national, in view of the mainly countrywide public tender procedures.
- (12) Disposal: The parties have identified the disposal of ordinary waste as a distinct product market. The parties submit that the geographic market is regional, consisting of catchment areas with a radius of 200 km from each disposal facility. The Commission agrees with the product market definition suggested by the parties. The exact geographic market definition can be left open.

### *Hazardous waste or special industrial waste ("SIW")*

- (13) Collection: Both Sydkraft (through its subsidiary Svensk Avfallskonvertering AB ("SAKAB")) and Sita Sverige are active in the so-called intermediate storage of SIW. In previous decisions the Commission has not assessed whether intermediate storage of hazardous waste forms part of the overall collection market or it is a stand-alone market. This question can be left open, as under neither alternative definition would effective competition be significantly impeded. Moreover, the parties have submitted that the relevant geographic market for intermediate storage is regional, consisting of areas with a radius of 200 km from each facility as the storage facilities in some

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<sup>3</sup> See Case n° IV/ 1059-Suez Lyonnaise/BFI

<sup>4</sup> See, in particular, Commission Decisions in Case IV/M295 - SITA-RPC-SCORI and in Case IV/M916 - Lyonnaise des Eaux/Suez.

cases function as "stop-over-sites" for small quantities of hazardous waste. Sita Sverige is also active in the market for collection/transportation of hazardous waste, whereas Sydkraft (through SAKAB) is only very marginally active therein. The question whether transportation of SIW forms part of the overall collection market or whether transportation constitutes a separate market can be left open as under neither alternative definition would effective competition be significantly impeded.

- (14) Treatment: in line with previous Commission decisions, the parties suggest that the market for treatment of hazardous waste can be further delineated in incineration and detoxication. The exact product market definition can be left open as under neither alternative definition would effective competition be significantly impeded. The relevant geographic market for the treatment of hazardous waste/SIW is considered to be national (Sweden), since only a few treatment facilities exist in the country, all of which receive and treat waste from all Swedish regions. However, for the purpose of this decision, the exact geographic market definition can be left open as under neither alternative definition would effective competition be significantly impeded.

#### *Operation of district heating network*

- (15) The notifying parties submit that the operation of district heating shall be regarded as a separate product market in line with previous Commission decisions<sup>5</sup> and that each individual network constitutes a relevant geographic market (network-by-network approach), where each network operator enjoys a *de facto* monopoly. However, for the purpose of this decision the exact geographic market definition can be left open as under neither alternative definition would effective competition be significantly impeded.

#### *Production of heat ("waste-to-energy")*

- (16) The parties submit that the supply of heat to a district-heating network by using ordinary waste as fuel is to be viewed as a separate market. It is submitted that the relevant geographic market for this activity comprises the district heating system in which the heat is used, i.e. the local network. For the purpose of this decision the exact geographic market definition can be left open as under neither alternative definition would effective competition be significantly impeded.
- (17) For the reasons set out below, the transaction does not appear to raise any competition concern under any of the alternatively considered product and geographic markets.

### **III. ASSESSMENT**

#### *(a) Horizontal overlaps*

- (18) The concentration does not give rise to horizontal overlaps in 1) the market for disposal of ordinary waste, and 2) in the market for treatment of hazardous waste. In addition, the concentration does not give rise to horizontal overlaps in the markets

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<sup>5</sup> Case n° COMP/M.2701-Vattenfall/BEWAG

for 3) operation of district heating network and 4) the production of heat (waste to energy) respectively as only Sydkraft/ Ecoplus is active in these markets.

- (19) With regard to the market for collection of ordinary waste there exists a horizontal overlap as the parties would obtain, in a worst case scenario (i.e. delineating the market further in collection of ordinary household waste and collection of ordinary industrial and commercial waste), a combined market share for collection of ordinary household waste of <[5-15] % (Sita [10-20]%, Sydkraft <[0-10]%) in the whole of Sweden. If regional markets were considered, no overlap would exist, as Sita is not present in the county of Östergötland, the only one where Sydkraft is active.
- (20) With regard to hazardous waste Sydkraft is active in intermediate storage, treatment of such waste and collection/transportation (through SAKAB) whereas Sita Sverige is active in intermediate storage and collection/transportation of hazardous waste. The horizontal overlap on the market for intermediate storage between one facility belonging to SAKAB and a facility belonging to SITA Sverige appears to be de minimis<sup>6</sup>. As regards the market for transportation of SIW, the horizontal overlap for incineration and detoxication combined amounts to a market share of [0-10]%. In a worst-case scenario (i.e. further delineating the market into transportation of waste for detoxication and transportation of waste for incineration and assuming that the parties are able to devote their entire transportation capacity exclusively to either), market shares would amount to <[0-10]% for the former and <[10-20]% for the latter.

b) *Vertical effects*

- (21) The parties have submitted that even though the concentration, in a worst case scenario, gives rise to four vertical relationships, these potential vertical issues do not give rise to any competition concerns. These submissions have not been disputed in the Commission's market investigation.
- (22) First, there is a vertical relationship between the operation of the district heating system by Sydkraft and the upstream waste-to-energy facility of Ecoplus in Mora. However, this vertical link existed already prior to the concentration and is not altered by the acquisition of joint control of Sita Sverige over Ecoplus.
- (23) A second vertical relationship exists between the waste-to-energy facility of Ecoplus and Sita's presence on the upstream market of ordinary waste collection, where it collects around [15-25]% of total ordinary waste or [45-55]% of ordinary household waste in the county of Dalarna, where Mora is located. Nonetheless, pursuant to the Swedish waste management regulatory framework the decision on the final destination of household waste cannot be taken by waste collectors independently but remains with the municipalities. In the light of this, the vertical relationship at stake does not have any effect on the market.

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<sup>6</sup> SITA Sverige's intermediate storage facility in Örnsköldsvik is merely a tank for waste oil with a capacity of less than [...]m<sup>3</sup> with a turnover of approximately SEK [...] (approximately Euro [...]). It represents a market share of less than [5-10] % on the reception area covered by SAKAB's Umeå facility.

- (24) With regard to hazardous waste a vertical relationship occurs between Sita Sverige's intermediate storage facilities and Sydkraft/SAKAB's activity in the market of SIW treatment. The operation gives rise to a vertically affected market for treatment (as SAKAB's market share in base on incineration is [35-45]%) in relation to Sita Sverige's intermediate storage activity. However, it appears to engender no risks of foreclosure, since Sydkraft is already vertically integrated and the *de minimis* increment through Sita's activities does not appear to reinforce this vertical integration in any significant manner.
- (25) Finally, a vertical relationship arises between Sita Sverige's collection/transport of SIW activities and Sydkraft/SAKAB's activity in the market of SIW treatment (SAKAB has a [35-45]% market share for incineration). However, SAKAB is already vertically integrated (although marginally) into collection/transportation of SIW prior to the operation. Moreover, the combined market share on the upstream market for collection/transport of SIW is, in a worst case scenario (see paragraph 20), <[15-25]% (Sita <[15-25]%; SAKAB <[0-10]%) and thus at a level which does not give rise to any risk of foreclosure.

## **VI. CONCLUSION**

- (26) 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

Franz FISCHLER  
Member of the Commission