

***Case No COMP/M.3205 -
SNPE / SAAB / PATRIA /
JV (EURENCO)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/10/2003

*Also available in the CELEX database
Document No 303M3205*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/10/2003

SG (2003) D/232031

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir, Madam

**Subject: Case No COMP/M. 3205 – SNPE / PATRIA / SAAB / EURENCO JV
Notification of 20/08/2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 20 August 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which SNPE, controlled by the French State, SAAB AB (“SAAB”, Sweden) and Patria Industries Oyj (“Patria”, Finland) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly created joint venture, named EURENCO.
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. SNPE is a French State entity, whose main activities include the fabrication of energetic materials, including explosives and propellants, and the production of fine chemicals including nitro-cellulose. SNPE has a small shareholding (less than 15%) in Sofisport which through its subsidiary Nobel Sport is a producer of small arms ammunition. Nobel sport was a subsidiary of SNPE. A majority share holding was sold to the Basaltes Group

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 2000. Since then the SNPE's stake in Sofisport has been successively reduced by sales of shares to Basaltes to its present level. By 2005 SNPE will have sold its remaining interest.

4. SAAB is a Swedish company operating in the sectors for defence, aviation and space. Saab's products include military and commercial aircraft, missiles and defence electronic support. Patria is a Finnish company controlled by the Finnish State. Patria operates in defence, aviation and aerospace technology.

II. THE OPERATION

5. The operation concerns the proposed merger of the propellants and explosives interests of SNPE (currently held by its subsidiary, SME and, in particular by SME Explosives and Propellants) and of Saab and Patria (currently held by Nexplo, which is jointly controlled by Saab and Patria) into a new company, EURENCO.

III. CONCENTRATION

6. After the completion of the transaction, SNPE will have 60,2% of Eurenco's shares, and SAAB and Patria will each have 19,9% of the shares. Pursuant to the Shareholder's Agreement, and given that important decisions² of the Board of Directors will require consensus, both SAAB and Patria have veto rights, and will therefore have joint control over EURENCO and indirectly over its wholly-owned subsidiaries.
7. The notifying parties will provide the necessary contributions for the operation to perform all the functions of an autonomous economic entity on a lasting basis. In this context it should be noted that Nexplo is itself a full function joint venture. In light of the above, it may be concluded that the proposed transaction is a concentration within the meaning of Article 3(2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion³ (SNPE: EUR [...]; SAAB: EUR [...] and Patria: EUR [...]). Each of them have a Community-wide turnover in excess of EUR 250 million (SNPE: EUR [...]; SAAB: EUR [...] and Patria: EUR [...]), 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.

V. COMPETITIVE ASSESSMENT

V. I - The relevant product markets

9. SNPE, through its affiliate SME, and NEXPLO are both active in producing propellants and explosives. Propellants are chemical compounds in which a chemical transformation

² Consensus will be required, inter alia, for approval of [...].

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.

(deflagration) forces projectiles out of gun barrels or provides thrust to missiles driven by a rocket motor. Explosives are chemical compounds in which the chemical transformation (detonation) is more rapid, and which exert a crushing or shattering effect.

V. I. (a) - Propellants

The parties' position

10. The parties propose to differentiate between propellants for civil and propellants for military applications. They then distinguish between the various propellants on the basis of their composition.

Separation between civil and military applications

11. Military markets are characterised by the fact that the ultimate customers are the Ministries of Defence ("MoDs"), who exercise strict control over the production of military products including propellants for military applications. Apart from certain standard, off-the-shelf products made to national or international (NATO) specifications, many military products are specifically developed and manufactured to the customer's specifications. These specifications are generally more onerous than the requirements of civilian customers. The qualification process and bidding nature of the market are general features in the selection of defence-related products. In practice, each manufacturer is subject to a testing and evaluation phase for its products, which is then followed by a lengthy qualification process. Qualification is programme-specific, and is aimed at demonstrating the ability of the selected manufacturer to provide products of constant quality, meeting the requirements imposed by the final consumer (MoDs). Only when qualified can the manufacturer start commercial production. Military products are relatively high value products. On the other hand, civil products are, generally speaking, standard, off-the-shelf products.

Categories of propellants following its composition

12. Following the chemical composition, the parties distinguish between single-based propellants, double-base and multi-base propellants, spherical powders and composite propellants.
13. Single-base propellants have as the principal ingredient nitro-cellulose (up to 98% of the total). They have both civil and military applications. Civil applications include hunting and sporting ammunition, cartridges for power tools and slaughter masks as well as cartridges for gas generators in the automotive industry. Military applications include ammunition for small, medium and large calibre ammunition.
14. Double-base propellants have as two principal energetic components nitro-cellulose (up to 50% in quantity) and nitro-glycerine (between 20% and 40%) and contain some additives. Multi-base propellants consist of nitro-cellulose or another energetic polymer (between 10% and 50%), nitro-glycerine or another nitric ester, nitramines, nitroguanidine and some additives. For safety reasons, the production costs of double and multi-base propellants are higher than those for single-base propellants. Due to their resulting higher price, they are only used for military applications (gun ammunition), except for some minor uses in the automotive industry (airbags).

15. Spherical powders are spherical or rolled grains of different diameters from 0.15 to 1.60 millimetres. Spherical powders are made of nitro-cellulose, nitro-glycerine and some additives. Spherical powders are a smokeless powders manufactured by a number of different processes. Only PB Clermont's process meets NATO requirements. In the parties' view, single-base propellants and spherical powders are to be included in the same relevant product market since spherical powders can be adapted to all applications for which single-base propellants are used, particularly in the civil sector. The only distinction between single-base propellants and spherical powders relates to the calibre of the weapons in which they can be used, spherical powders can only be used for small and medium calibres and not for large calibres. Applications include both civil and military uses.
16. Composite propellants consist of an oxidiser, mainly ammonium perchlorate, and metallic fuels in a resinous binder, with some additives. Composite propellants are mainly used for rocket motors. They are only produced by SME Propulsion and will not be transferred to the new joint venture Eurengo.

Definition of product markets for propellants

17. In view of the above, the parties propose that the market for civil applications of propellants is limited to single-base propellants and spherical powders, whereas the market for military applications would include all types of propellants. Within the military applications, the parties consider that it is appropriate to separate the military barrel-related applications and the propellants for rocket motors.
18. The parties submit that propellants for rocket motors are different products compared to propellants for military barrel-related applications. Propellants for rocket motors are either double-base propellants or composite propellants. Double-base and composite propellants for rocket motors differ from those used for barrel-related applications in composition and in all the machinery needed in the process.
19. In summary, the parties consider that the relevant product markets for propellants should be defined as follows:
 - a) Propellants and spherical powders for civil applications;
 - b) Propellants and spherical powders for military barrel-related applications; and
 - c) Propellants for rocket motors.

The market investigation

20. A large majority of the respondents to the market investigation agree that a distinction can be made between military and civil applications, and that a distinction can be made between propellants for ammunition and propellants for rockets as proposed by the parties. However, a number of respondents to the market investigation have suggested that there is a separate relevant product for propellants for small arms ammunition (small and medium calibre). They also suggested that the distinction between civil applications and military applications might not be appropriate in relation to small arms ammunition, in view of the high degree of supply side substitutability. However, it is not necessary to choose between the various alternative market definitions as no competition concerns arise whatever the product market definition.

V. I. (b) – Explosives

The parties' position

21. Explosives can be divided in two main categories based on functional criteria: primary explosives and secondary explosives. A primary explosive is a single explosive substance which detonates when subjected to flame or other form of energy. A secondary explosive is not easily detonated and requires an igniter or detonator.
22. Within secondary explosives, the parties distinguish between commercial explosives and military type explosives. The parties consider that commercial explosives such as ANFO (ammonium nitrate fuel oil) and their derivatives form a different product market from military explosives. The parties argue that from a technical point of view, commercial explosives have lower detonation velocity and pressure than military type explosives, which makes them more suitable for dislodging large pieces of rock. Additionally, prices for commercial explosives are lower than military type explosives and, lastly, commercial explosives are readily available in every part of the world from a large number of manufacturers, whereas military type explosives are manufactured by a more limited number of competitors.
23. The notified transaction concerns only military type explosives since neither SNPE nor Nexplo are active in the production or supply of primary explosives or commercial (secondary) explosives. Euroenco will not be active in the production or supply of primary or commercial (secondary) explosives. The parties consider that the markets for military type explosives should be firstly divided depending on whether they are destined for civil applications or for military applications. The reasons for this distinction are similar to those discussed above for propellants,
24. Regarding the markets for civil applications explosives, the parties further distinguish between two applications: (a) demolition, rock blasting and pyrotechnical devices (such as detonating cord) on the one hand, and (b) oil exploration on the other hand. For demolition, rock blasting and pyrotechnics, TNT and PETN are the explosives normally used due to their low cost. More sophisticated and expensive explosives such as RDX, HMX, HNS and PYX are used for oil exploration, where their increased stability is an important factor in their use.
25. With respect to the sector of explosives for military applications, the parties consider that the relevant market includes all military explosives for military applications. Military applications explosives are used for all types of explosive charges: bombs, missiles, mines, torpedoes, shells. Unlike civil applications where explosives are used as such, military applications explosives are generally mixtures of various energetic substances specially formulated for each particular weapon.
26. In summary, the parties consider that the relevant product markets for military type explosives should be defined as follows:
 - a) Civil applications – PETN/TNT;
 - b) Civil applications – explosives for oil exploration (i.e. RDX, HMX, HNS, PYX);
 - c) Military applications – all military type explosives for military applications.

The market investigation

27. The market investigation confirms that military type explosives are used in both civil and military applications and that separate relevant product markets are appropriate for each application. The majority of the respondents agree that military type explosives for civil applications may be further subdivided into civil applications (PETN/TNT) and explosives for oil exploration (RDX, HMX, HNS, PYX).
28. The market investigation has also confirmed all explosives listed above have military applications although they are generally used in mixtures rather than stand-alone basis. All military explosives may be then considered globally, as proposed by the parties.
29. In summary the market investigation has confirmed the relevant product market definitions proposed by the parties.

V.II - The relevant geographic markets

The parties' position

30. For the Civil markets, the parties submit that they should be considered to be world-wide in scope as all players compete on a global basis and the final product components can be safely and economically transported over long distances.
31. As for Defence markets, a distinction is traditionally made between those countries where the Ministries of Defence ("MoDs"), being the ultimate customers, award contracts to a domestic supplier on the one hand, and those countries without a national supplier on the other hand. In the latter case, existing products rather than tailor made programmes are procured, and prime contractors are usually selected on the basis of open international competitions. The relevant geographic market is considered national in scope where there is a national supplier, and otherwise international. The parties endorse this definition for the present case, but submit that even those markets where a national producer is active are increasingly opening up to European or broader international competition.

The market investigation

32. The responses received during the investigation do not support the parties' proposition of a worldwide market for the civil markets. Most of the respondents mention several market features rendering more difficult for non-European products to enter the European market. In particular, the cost of transport of hazardous materials as well as a variety of National and European regulations associated to this type of shipping appear as a considerable barrier practically for non-European products. In addition, customers have a preference for the shorter supply chains associated with European products. However it is not necessary to define the relevant geographic market for the various civil markets as no competition problems will arise whichever definition is applied.
33. Respondents to the market investigation agree in general that national suppliers enjoy a certain advantage over the competitors in those military markets where a national producer is active. It is indicated that national players, due to historical reasons are better fit to meet the national MoD's bid requirements in terms of technical features, certifications, qualification evidence etc. However, there is also a general agreement as to the general tendency to a progressive opening to a European level. The respondents consider in general that the cost rationalisation which is occurring within the Defence

Industry will result in a wider geographic market. For the purpose of the present decision, national markets have been examined where a national supplier exists.

V.II - Assessment

Horizontal issues - Propellants

– Propellants for civil applications

34. On the basis of the parties' proposed delineation of the market – an overall market for propellants and spherical powders for civil applications with world wide scale – EURENCO would have an estimated [5-15%] share (Nexplo: [0-10%] and SNPE [0-10%]). After the transaction the competition is ensured at European scale, as two strong competitors remain in the market, Nobel Sport and UEE, as shown below.

Company	Share	Country of origin
Nexplo	~[0-10%]	Sweden/Finland
SNPE (PB Clermont)	~[0-10%]	Belgium
Eurengo	~[5-15%]	
Nobel Sport	~[5-15%]	France
UEE	~[5-15%]	Spain
Primex	~[20-30%]	USA
Alliant Techsystems	~[10-20%]	USA
ADI	~[0-10%]	Australia
SNC Exprotec	~[5-15%]	Canada
Others	~[10-20%]	-
Total	100%	-

35. During the market investigation, it has been indicated to the Commission that the segment of propellants for small arms ammunition should be considered separately. It is also suggested that division between civil and military applications might not be appropriate in the case of small ammunition. The table below shows the estimated current shares of Eurengo and its main competitors at the EEA level for (I) propellants for civil small ammunition applications and (II) propellants for civil and military small ammunition applications.

Company	Civil small ammunition applications	Civil and military small ammunition applications
Nexplo	[5-15%]	[5-15%]
SNPE (P B Clemont)	[0-10%]	[10-20%]
Eurengo	[10-20%]	[20-30%]
Nobel Sport	[20-30%]	[20-30%]
UEE	[20-30%]	[20-30%]

Nitrokemia	[5-15%]	[0-10%]
Explosia/Synthesisia	[0-10%]	[0-10%]
Nobel Enterprises	[0-10%]	[0-10%]
Nitrochemie	[0-10%]	[0-10%]
Somchem	[0-10%]	[0-10%]
SNC Exprotec	[0-10%]	[0-10%]
Primex	[0-10%]	[0-10%]

36. The French company Nobel Sport is an important European player in any of the alternative market definitions and represent a significant alternative supplier for customers. It has around a [20-30%] share for civil small ammunition applications propellants and around [20-30%] for propellants for civil and military small ammunition applications. However, SNPE presently has a [<15%] participation in Nobel Sport, via the participation in the company Sofisport, the remaining shares being owned by the Basaltes group.

37. The Commission has carefully examined the nature of the relationship between SNPE and Nobel Sport. SNPE has an indirect minority shareholding of [<15%] in Nobel Sport. This shareholding entitles SNPE only the usual protection for minority shareholders and confers no veto rights that would give SNPE joint control over the company. While SNPE has more than 10% of the shares in Sofisport [...]. SNPE supplies nitro-cellulose to Nobel Sport under a contract negotiated at arm's length. This contract covers [...] of Nobel Sport's requirements. However there are adequate alternative sources of nitro-cellulose available. In the light of this situation and given that Nobel Sport is primarily engaged in the production of small arms ammunition rather than propellants and therefore has very different objectives to the parties the Commission concluded that SNPE does not exercise significant influence over Sofisport and Nobel Sport. Furthermore there is no incentive for the parties on the one hand and Sofisport and Nobel Sport on the other to collude.

– *Military propellants for barrel-related products*

38. For the defence related markets and considering the market as national where a domestic supplier exists, SME and Nexplo only have overlapping sales in Belgium, where EURENCO would consequently have a [50 - 60%] combined market share. However, the characteristics of the military markets have a decisive influence on competitive conditions in this market. In particular, the MoDs, being the only customers for these products, have considerable buyer power in the military markets and the option always exist for the Belgian MoD to switch to other producers; conversely, producers, including the parties, are highly dependent on the decisions of the Belgian procurement agencies. Military supplies are procured through bidding markets, involving a qualification process, and thus high market shares are not a priori demonstrative of market power. Other than in Belgium, Nexplo is only active in Finland and Sweden, where it is the domestic producer. SNPE is the domestic producer in France and Belgium (through the former Belgian company PB Clermont). The transaction does not, therefore, raise competition concerns in any market for military propellants for barrel-related

applications even taking a narrow approach in respect of the geographic scope of the market

– *Propellants for rocket motors*

39. The creation of EURENCO does not raise competition concerns in the market for propellants for rocket motors, as no activity relating to propellants for rocket motors will be transferred to Eurenco. Moreover, they are produced by SNPE (in particular by SME Propulsion), by Roxel (jointly controlled by SNPE, and MBDA), and by Nammo (jointly controlled by the Norwegian Government, Saab and Patria) only for the purposes of each company's internal production of propulsion systems.

Horizontal issues - Explosives

– *Military explosives for civil applications*

40. The parties overlap in the supply of certain compounds used as military explosives in civil applications. In particular, both parties are active in the supply of PETN. In the segment of oil exploration, both parties supply RDX and HNS.
41. In the market for PETN, the transaction does not raise competition concerns whether analysed at world or European level. The worldwide market for civil PETN is estimated⁴ to be around 10,000 tonnes and the market volume for civil PETN in Europe represents approximately 4,000 tonnes per year. The parties produce around [...] tonnes and competition is ensured by the presence of strong competitors (UEE, Spain; SSE, Switzerland, Orica Germany, Germany). It is also worth noting that Nexplo's sales in the EU are in Sweden, Finland and in the UK whereas SME's sales of PETN are all in France.
42. The market for oil exploration explosives, taken globally, is estimated to be of only EUR 16 million worldwide. The European sales of oil exploration explosives by the parties represent [...] per year approximately. SME has a total turnover of less than EUR [...] to be added to Nexplo's EUR [...]. The notified transaction, therefore, does not give rise to any horizontal competition concern in relation to the market for oil exploration explosives.

– *Military explosives for military applications*

43. If one considers the market as national where a domestic supplier exists, and as worldwide otherwise, horizontal effects are limited to the French market. Indeed, the market investigation has indicated that SNPE and Nexplo have rarely competed directly with one another. SNPE is only active in France. Apart from Sweden, where it is the domestic supplier, Nexplo is active in Finland (around [0-10%] market share) and Spain (around [0-10%] market share). In France, SNPE (SME) has [85-95%] of the market due to its position as a domestic supplier. The remaining [5-15%] are currently held by Nexplo. Based on the characteristics of the military markets mentioned above⁵, and

⁴ Source: Form CO, figures for 2002.

⁵ See paragraphs 11, 31 and 38 in particular.

given that the French MoD is the sole customer of military explosives for military applications, it can be considered that the parties will remain highly dependent on the decisions of the French MoD and would not be able to behave independently in the market. In the event that the French MoD would no longer consider its domestic supplier as the preferred supplier, it would, post transaction, continue to have the ability to select through bidding procedures military explosives suppliers other than Euroco. Within the EEA, these include Dyno Defence (Norway), Royal Ordnance (UK), UEE (Spain). Therefore, it is unlikely that the transaction would raise horizontal competition concerns in any market even taking the most narrow approach with regard to the geographic scope of the market.

Vertical issues

44. Both SNPE and Nexplo produce nitro-cellulose, the raw material for propellants. Nexplo's production is for captive use only and will be contributed to the JV. SNPE's nitro-cellulose production will remain independent from the JV. Therefore, and as SNPE's market share for nitro-cellulose is below 25%⁶, the operation will not change the competitive structure of the market.

Co-ordination effects

45. SNPE produces propulsion systems (rocket motors) for strategic weapons and is through Roxel (a French joint venture jointly controlled by SNPE and the French undertaking MBDA) the market leader for propulsion systems as used in tactical weapons. Nammo, a Norwegian company jointly controlled by SAAB, PATRIA and the Norwegian government is a competitor to Roxel in this market. MBDA is the leading tactical weapons producer and competes with SAAB in this market. However, EURENCO will not be active on the rocket motor propellants market.
46. SNPE's propulsion systems activities focus on strategic missiles which is a different market as confirmed by the market investigation from Nammo's tactical weapon propulsion systems. Whilst both Nammo and Roxel are active on the latter market, they produce their propellants requirements internally. The risk of co-ordination on any of these markets is not then considered.

VI. CONCLUSION

47. 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)
Mario MONTI
Member of the Commission

⁶ SNPE accounts for around [10-20%] of non-captive sales, on the basis that the open market includes non-NATO member States as well as NATO member States that do not have domestic nitro-cellulose producer.