

***Case No COMP/M.3268 -
SYDKRAFT /
GRANINGE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/10/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30/10/2003

SG (2003) D/232960

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying Party

Dear Sir/Madam,

Subject: Case No COMP/M.3268 – SYDKRAFT / GRANINGE
Notification of 29.09.2003 pursuant to Article 4 of Council Regulation
No 4064/89

1. On 29.09.2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the “Merger Regulation”) by which Sydkraft AB (“Sydkraft”, Sweden), belonging to the German E.ON Group (“E.ON”), acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of the whole of the undertaking Graninge AB (“Graninge”, 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 with the EEA Agreement.

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).

I. THE PARTIES

3. Sydkraft is an energy company active in *inter alia* the fields of electricity, natural gas and district heating, mainly in Sweden but also in Finland. E.ON holds 55% of the shares in Sydkraft²; the Norwegian state-owned energy company Statkraft holds 45%.
4. Granninge is an energy company active in the fields of electricity and district heating in Sweden and Finland. The French energy company Electricité de France (“EDF”) holds 36.3% of the shares in Granninge, two families hold together 17.5% and Sydkraft holds 36.4%. EDF and the two families have joint control over Granninge through a shareholders’ agreement.³

II. THE OPERATION

5. Sydkraft acquires EDF’s shareholding in Granninge and will hold 72.7% of the shares, thus gaining sole control over Granninge.

III. CONCENTRATION

6. In the light of the above, it can be concluded that the operation constitutes a concentration within the meaning of article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (EUR 37,196 million for E.ON Group and EUR 370.4 million for Granninge). Each of E.ON Group and Granninge have a Community-wide turnover in excess of EUR 250 million [EUR....] million for E.ON Group and [EUR....] million for Granninge), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State (E.ON achieved more than two thirds of its community-wide turnover in Germany and Granninge achieved more than two thirds of its community-wide turnover in Sweden). The notified operation therefore has a Community dimension.

² See Commission decision of 9.4.2001 in case No M.2349 – E.ON/Sydkraft.

³ See Commission decision of 25.5.1998 in case No M.1169 – EDFI/Granninge.

⁴ 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, p. 25). 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. MARKET DEFINITION AND COMPETITIVE ASSESSMENT

A. Overview of the Nordic electricity market

8. The Nordic electricity market – comprising Norway, Sweden, Denmark and Finland – is fully liberalised and connected through interconnectors. Anyone connected to any part of a national network in Denmark, Finland, Norway and Sweden can in principle buy (or sell) electricity from (to) anyone else connected to the network.
9. The total production of electricity in the Nordic countries amounts to approximately 380-390 TWh per year (of which Sweden accounts for approximately 40%, Norway 30%, Finland 20% and Denmark 10%).
10. Electricity is transmitted from power stations to consumers through a network of power lines (national grids, regional networks and local networks). The consumption and production of electricity must be in balance at every instant, which is achieved by balance control. There is a transmission system operator (“TSO”) in every country who is responsible for (i) the task of maintaining this balance, and (ii) the national grid.
11. Electricity prices are determined by supply and demand in the Nordic market. Nord Pool – the Nordic Power Exchange – is the central market place for sales and purchases of electricity in the Nordic region. Nord Pool operates the following market places: (i) Elspot (market for physical trading of electricity for next day delivery); (ii) Elbas (continuous physical market for balance purposes, i.e. trade in electricity closer to delivery time than Elspot); (iii) Eltermin (financial market for price hedging and risk management when buying and selling electricity power); and (iv) Eloptions (financial market for risk management and for forecasting future income and costs related to trade in electricity contracts). Nord Pool also offers a clearing services for power traded over the counter (OTC) and bilaterally.
12. It is at Nord Pool’s Elspot market where the daily electricity price (the “system price”) is set based on the interception of the aggregated supply and demand curves derived from daily bids from all the market players in the Nordic countries. During normal periods when there is no congestion (bottlenecks) in the inter-Nordic transmission network, the Nordic countries constitute one price area. During periods with bottlenecks, Nord Pool splits the market into separate price areas with different prices. In 2002, the Nordic Region was a single price area 35% of the time. The rest of the time, the Nordic Region was subdivided into different constellations of smaller price areas.

B. Competitive assessment

13. The proposed transaction will lead to horizontal overlaps between the parties’ activities in (i) generation and wholesale of electricity, (ii) regulation power, (iii) financial energy trading, (iv) transmission and distribution of electricity, (v) supply of electricity to end-users, (vi) district heating, and (vii) supply of gas.

1. Generation and wholesale of electricity

1.a. Product market

14. The Commission has in previous decisions considered the generation and wholesale of electricity to constitute one separate product market.⁵ This encompasses the production of electricity at power stations as well as electricity physically imported through interconnectors.
15. Sydkraft considers electricity production as a separate product market for the following reasons. Electricity production may be regarded as the first part of the “value chain” of the market for production and wholesale supply of electricity. The production of electricity is required to take place in a separate legal entity from the delivery of electricity to end-users. The production is sold on a wholesale market either to traders, distribution companies or large industrial end-users.
16. Electricity can be traded on the wholesale market in a number of ways. At the bilateral market electricity is traded directly between a seller and buyer up to several years before the operating hour.
17. Elspot is an auction-based spot market for trade in power contracts for physical delivery where hourly power contracts are traded daily for physical delivery in the next day’s 24-hours period. According to Nord Pool’s annual report, in 2002, the volume of contracts traded via the Elspot market was 123.6 TWh, equivalent to 32% of the electricity consumption in the Nordic countries. This means that 68% of all physically traded electricity was traded outside the Nord Pool.
18. The Elbas market is an after-market for Elspot that allows the participants to settle contracts after the Elspot market has closed and until one hour before the operating hour. Due to the time span of up to 36 hours between Elspot price-fixing and delivery, participants use this market to improve their balance of physical contracts.
19. The Commission’s market investigation confirmed that generation and wholesale of electricity constitutes a separate product market. The market encompasses electricity sold on bilateral contract as well as electricity sold on Elspot and Elbas. The main reason being that producers would easily be able to substitute between these different markets in reaction to permanent price differences.
20. However, for the purpose of this decision the precise product market definition can be left open, since the transaction will not lead to competition concerns.

1.b. Geographic market

21. While the bilateral contracts require both parties to reside in the same country, Elspot allows for exchange of electricity between countries. Elspot sets the system price based on the interception of the aggregated supply and demand curves derived from bids from all the market players in the Nordic countries.

⁵ See Commission decisions of 25.7.2002 in case No COMP/M. 2890 – EDF/Seeboard and of 18.12.2002 in case No COMP/M. 3007 – E.ON/TXU-Europe Group, respectively.

22. When production and consumption is sufficiently asymmetric, a fully integrated market is impeded by congestions in the network. Elspot's price mechanism is used to regulate the flow of power where there are capacity restrictions in the overall Nordic grid. When congestions develop, two or more area prices are created, with high prices in areas where consumption is higher than production and low prices in areas with a production surplus. By reducing or increasing area prices, the power flow is altered until it matches allocated grid capacity.
23. The permanent price areas in which Nord Pool can devise different prices are: Sweden, Finland, Denmark West (DK1), Denmark East (DK2), South Norway (NO1) and Middle/North Norway (NO2). These may become separate price areas if the contractual flow of power between bid areas exceeds the capacity allocated for Elspot contracts by TSOs.
24. Sydkraft considers the geographic scope of the generation/wholesale market to encompass at the very least the Nordic countries (Denmark, Finland, Norway and Sweden). Sydkraft submits that in hours with no congestion on the network, prices are identical in all the Nordic countries and the Nordic area is an integrated geographic market. The distribution of price areas within the Nordic area and the frequency with which they occur varies from year to year primarily due to variations in weather conditions (precipitation and cold). In 2001, the Nordic region was one single price area 52% of the time. The corresponding figure for 2002 was 35%.⁶
25. Electricity is a product, which cannot be stored and must therefore be consumed in the same instant as it is produced. Combined with a limited possibility of substitutability between different time periods different geographic electricity, markets can be distinguished by the time at which the electricity is delivered. As indicated above congestion on the transmission network can cause the Nordic electricity market to split into separate price areas. This limits the number of suppliers able to supply electricity in a given area and thereby the competitive structure of the market.
26. Considering these dynamic aspects of the geographic market, the Commission has investigated the frequency and distribution of the different price areas of the Nordic electricity market.⁷ The Commission has considered the number of hours in which Sweden has been isolated from the rest of the Nordic area. In 2000, Sweden was isolated from the other areas 5.5% of the time. In 2001, it was isolated 0.0%, 0.1% in 2002 and 0.0% in January-September 2003.⁸ This implies that Sweden mostly is a part of a larger market. Considering neighbouring areas, the price in Sweden was the same price as in Finland 84.2% of the time in 2000, 99.1% in 2001, 95.0% in 2002 and 70.2% in 2003. The price in Sweden and Denmark East, respectively, was common 92.8% of the time in 2000, 94.6% in 2001, 90.7% in 2002 and 93.6% in 2003.
27. Based on this, it is clear that Sweden has only constituted a separate geographic area during an insignificant period of time in each of the last years. At the same time the

⁶ "A Powerful Competition Policy", a report from the Nordic competition authorities, June 2003.

⁷ See also the report "Relevant markets in the Nordic area", Copenhagen Economics, 21 October 2002. The report is available on www.nordel.org.

⁸ Based on figures supplied by Nord Pool.

price correlation between Sweden and Finland and Sweden and Denmark seems to imply that the generation/wholesale market is likely to be larger than Sweden. However, for the purpose of this decision, the precise scope of the geographic market can be left open, since the transaction will not create competition concerns on any alternative assumption.

I.c. Assessment

28. Considering a Nordic market for the generation of electricity, the proposed transaction will not give rise to an affected market. The parties combined market share was [5 – 10]% (Sydkraft [5 – 10]%, Graninge [0 – 5]%) in 2002. Their largest competitor, Vattenfall, holds a market share of [15 – 20]% and Statkraft a market share of [10 – 15]%. Looking at a separate Swedish market for the generation of electricity the parties would hold a share of total production of [20 – 25]% (Sydkraft [15 – 20]%, Graninge [0 – 5]%). In comparison the largest Swedish producer Vattenfall would hold a market share of [45 – 50]%, Fortum [15 – 20]% and a number of smaller generators with [0 – 5]% each.⁹ In Finland the parties’ activities will be minor. Sydkraft’s parent company E.ON is active on the Finnish market and has a market share of approximately [0 – 5]% of electricity production. Graninge is also active on the Finnish market with a market share of [0 – 5]%.
 29. When the dynamic aspects of the geographic market are considered, the parties’ market shares based on production are as follows:

2002	Sweden and Finland	Sweden and Denmark East	Sweden, Finland and Denmark East	Sweden and Tromsø	Sweden and Oslo
Sydkraft	[10 – 15]%	[15 – 20]%	[10 – 15]%	[15 – 20]%	[10 – 15]%
Graninge	[0 – 5]%	[0 – 5]%	[0 – 5]%	[0 – 5]%	[0 – 5]%
Total	[10 – 15]%	[15 – 20]%	[10 – 15]%	[15 – 20]%	[10 – 15]%

30. Both Sydkraft and Graninge are active on the wholesale market for electricity. Electricity is traded on Elspot, and to a large extent bilaterally. The bilateral trade takes place outside Elspot.
 31. Sydkraft estimates the total consumption in the Nordic wholesale market to have been [105 – 115] TWh in 2002. However, the total consumption in the wholesale market is smaller than total sales since electricity suppliers and traders resell large volume of the electricity to customers in the end-use market. Consumers of electricity on the wholesale market are large industrial customers.
 32. In the Nordic countries, Sydkraft’s electricity sales in 2002 totalled [30 – 40] TWh, of which approximately [15 – 25] TWh on the wholesale market. By comparison Graninge sold [0 – 10] TWh on the Nordic wholesale market. Sydkraft cannot estimate the total

⁹ Looking at the total installed capacity figures the parties will control [20 – 25]%, Vattenfall [40 – 45]% and Fortum [15 – 20]%. The remaining [10 – 15]% are divided between a number of smaller competitors.

sales volume on the wholesale supply market. Sydkraft estimates its share of the Nordic wholesale market to be approximately [5 – 15]%. Granninge's sales are concentrated to sales to the end-user market. Its share of the Nordic wholesale market is estimated below [0 – 10]%

33. Considering a separate Swedish wholesale market for electricity Sydkraft sold a total of [30 – 40] TWh in Sweden in 2002. Out of this total around [10 – 20] TWh were sold in the wholesale market. Granninge sold a total of [0 – 10] TWh in 2002, of which [0 – 10] TWh on the wholesale market. Based on this Sydkraft estimates its market share in 2002 on wholesale market in Sweden to have been [10 – 20]% and Granninge's [0 – 10]%. Sydkraft estimates Vattenfall to hold a market share of [45 – 55]%, Fortum approximately [10 – 20]%, Skellefteå Kraft around [0 – 10]% and Jämtkraft [0 – 10]%
34. Both parties' activities on the Finnish market are limited. Sydkraft estimates E.ON Finland to hold a [0 – 10]% share of the wholesale market and Granninge [0 – 10]%

(i) Unilateral effect

35. The report from the Nordic competition authorities¹⁰ concluded that the deregulation of the Nordic electricity sector has largely been successful, but that some obstacles to competition remain. These obstacles include the very inelastic demand, the high barriers to entry, the inflexible production facilities as well as the grid bottlenecks. Based on these findings, the authorities recommended that all mergers leading to increased market share be carefully reviewed.
36. The Commission's findings in this case are in line with the conclusions of the report. The highly inelastic demand has as a consequence that any exercise of market power could be highly profitable and lead to significant consumer harm. In addition, the barriers to entry and the inherent capacity constraints reduce the possibility for competitive responses to such an exercise of market power. In these circumstances market power could emerge and result in consumer harm at relatively lower concentration levels than in many other markets.
37. Eltra – the local grid operator in Western Denmark – has developed a market simulation model (MARS) that makes it possible to simulate the effect of changes in the market structure on the electricity prices.¹¹ For the purpose of analysing the current transaction, Eltra agreed to perform a number of simulations for the Commission. In its report to the Commission, Eltra concluded when comparing the outcome with and without the merger, "*It appears from market power simulations with MARS that the merger between Sydkraft and Granninge does not result in higher average prices in Sweden*". The simulations indicate that Sydkraft prior to the merger is not sufficiently large to have the incentive to withhold capacity in order to generate a price increase. This absence of market power is not significantly altered by the acquisition of Granninge.
38. Though simulation models, such as MARS, cannot fully take into account all the relevant details of the market situation, the simulation results are in line with the general results of the market investigation.

¹⁰ See footnote 6.

¹¹ More detailed information regarding the model is available at Eltra's homepage www.eltra.dk.

(ii) *Collective dominance through co-ordination*

39. The electricity market has a number of features that *prima facie* indicates that competition could potentially be significantly impeded through co-ordinated behaviour. In general three conditions are necessary for a finding of collective dominance based on tacit co-ordination:¹²
- each member of the dominant oligopoly must have the ability to know how the other members are behaving. There must be sufficient market transparency for all members of the dominant oligopoly to be aware, sufficiently precisely and quickly, of the way in which the other members' market conduct is evolving;
 - the situation of tacit co-ordination must be sustainable over time; that is to say, there must be an incentive not to depart from the common policy on the market; and
 - the foreseeable reaction of current and future competitors, as well as of consumers, would not jeopardise the results expected from the common policy.
40. A finding of a risk of collusion would *inter alia* have to rely on proof of the following market features:
- the product is very homogeneous;
 - the price-setting part of the transactions takes place on an exchange with a fairly high degree of transparency;
 - interaction is very frequent;
 - capacity restrictions lead to stable market shares and limits the scope for smaller players to disturb co-ordination by a tight oligopoly;
 - barriers to entry prevents co-ordination being disturbed by new entrants;
 - some production facilities are co-owned or otherwise shared by several producers.
41. In principle two different types of co-ordination could be envisaged. One where the oligopoly were to include all the large players in the Nordic region and one where co-ordination takes place amongst the Swedish operators (perhaps including the large operators in the most connected regions, such as Denmark East and Finland).
42. The first type of scenario appears likely to encounter difficulties given the fairly large number of relatively asymmetric operators. A more geographically limited oligopoly would be much more symmetric in terms of types of production facilities. Sydkraft, Vattenfall and Fortum are all active in both hydro-, thermal and nuclear production although with different volumes. It should be noted that a geographically more limited oligopoly would only be able to effectively influence prices in those periods where the relevant region due to bottlenecks is shielded from external competition.
43. A finding that the notified transaction raises serious doubts regarding the creation of a collective dominant position would require that the disappearance of Graninge significantly increases the risk of co-ordination in the market. In principle, even a small firm can, through its particular characteristics, be an aggressive competitive factor and act as a so-called “maverick”, preventing an oligopoly from successfully co-ordinating.

¹² Cf. CFI judgement of 6.6.2002 in Case T-342/99 *Airtours v Commission* [2002] ECR II-2585, par. 62.

In this particular case, though, there are no indications that Grange would be likely to be in a position to play such a role. This is mainly due to its capacity constraint. In a hypothetical situation with high prices due to insufficient capacity on the market, Grange would not have any different incentives from other producers or, the possibility to lastingly increase its output with a view to establishing a higher market share.

44. Similarly, the Commission has not found that the acquisition of Grange would significantly influence Sydkraft's incentives to co-ordinate.
45. Notwithstanding the overall risk of co-ordination in the market, the Commission has thus not found any reasons why this particular transaction would significantly alter the likelihood or scope for co-ordination. Consequently it is unlikely that Grange's disappearance from the market would materially affect the risk of co-ordination in the market.

2. Regulating power market

2.a. Product market

46. The regulating power market is a market for flexibility securing the overall functioning of the electricity system. Only a limited number of suppliers are active on the market for regulating power, since they must comply with certain demands and must be able to adjust their production with short notice. To authorise an operator to supply regulating power, the Swedish TSO requires a guarantee for the economic liability; that the bids be of at least 10 MW and at most 500 MW; and that the balance be regulated within 10 minutes. For upward regulation (i.e. need for higher production) the balance provider must be able to increase production at short notice. Likewise, if the system requires downward regulation (i.e. too high production), producers must lower their production or customers must increase their consumption. It requires a high degree of flexibility and available capacity to operate in this market. This is confirmed when considering the high amount of regulating power obtained from Norway, since the flexibility inherent in the production of hydro power makes it very suitable for regulation power. However, the need for regulating power is not known in advance but depends on the actual functioning of the electricity system. Based on this the market for regulating power shows specific characteristics, which separates this market from the general wholesale market.
47. Svenska Kraftnät is responsible for planning and co-ordinating the national balance between the production and consumption of electricity, as well as overseas exchange. Since it is impossible to store electricity there has to be a continuous balance between production and consumption to keep a stable frequency.¹³ The market players must make sure that they manage their balances. However, in practice deviations arise between the contracted and actual supply and demand, and these deviations must be balanced and settled. The balance management comprises a balance service that in the hour of operation creates a balance between production and consumption, and an imbalance settlement that follows after the 24-hour period of operation. The TSOs buy regulation power to cover the imbalances of the market players.

¹³ The frequency of the system, which is a measure of its balance, must normally lie within a specific range around 50.0 Hz (+/- 0.1 Hz).

48. Balance regulation is carried out by way of primary regulation and secondary regulation. Primary regulation means that the physical balance in the system is adjusted by automatically increasing or decreasing of the production in a number of power plants. A Nordic agreement between the TSOs sets out the level of regulation effect to be held in store for primary regulation by each country. Svenska Kraftnät is to procure 2,400 MW/Hz out of the total demand of the Nordic system of 6,000 MW/Hz.
49. Secondary balance regulation is a manual adjustment upwards or downwards of regulation objects and is carried out through power trades with the balance providers that have signed agreements with Svenska Kraftnät to take part in the balance regulation. Secondary regulation is used when the primary regulation is not sufficient and is aimed at restoring the primary regulation whose task it is *inter alia* to be a reserve in case of sudden disruptions in the power system. Primary regulation is for the most part procured nationally yet its price follows the price for secondary regulation, which in turn is determined by bids from suppliers in all the Nordic countries.
50. Sydkraft considers the balance regulation market to form a part of the overall wholesale market. This is in line with a study by Copenhagen Economics.¹⁴ This argument is built on two main reasons. First, that supply substitution is feasible and likely to be swift, so that prices on one of the markets cannot rise significantly without generators quickly moving capacity from the other three markets (Elspot, Elbas and regulating power market). Secondly, that there may be some demand substitution between the bilateral market and the spot market.
51. The market investigation indicates that balance regulation may constitute a separate product market. However, for the purpose of this decision it can be left open whether balance regulation constitutes a separate product market as well as whether primary and secondary balance regulation constitute separate segments within this product market, since the proposed transaction will not create any competition concerns under either market definition.

2.b. Geographic market

52. The regulating power markets in the Nordic countries were combined in September 2002. The balance of the synchronous part of the Nordic electricity market is now controlled based on the frequency. Bids for regulating power in all the countries are compiled in a merit order list available to all Nordic TSOs in a common information system NOIS (Nordic Operational Information System).¹⁵ The TSOs in Norway and Sweden maintain the frequency by making common decisions to upward or downward regulate, by activating the bids from the common list. If the grid is congested the regulation necessary to alleviate the bottlenecks are made first, followed by regulation of the frequency. Bids are activated in the merit order to secure the lowest price possible for the regulating power.

¹⁴ “Relevant markets in the Nordic area”, Copenhagen Economics, 21 October 2002. The report is available on www.nordel.org.

¹⁵ “Common Balance Management in the Nordic Countries”, special print of the feature article in Nordel’s 2002 report.

53. As mentioned above, Svenska Kraftnät procures around 2,400 MW/Hz of capacity for primary regulation. The procurement of the majority of this capacity is made from Swedish suppliers, for the reason that Svenska Kraftnät is responsible for the Swedish market. However, a part of the capacity for primary regulation in Sweden is supplied by Statnett Norge and Fingrid Finland.
54. Statistics from Svenska Kraftnät for the period September 2002–August 2003 show that Norway was the largest provider of both upward and downward regulating power in the Nordic area. Norway accounted for around 50% of the total regulating power market in the Nordic area. This high figure is based on low regulating power prices based on cheap hydropower. By comparison, Sweden’s share of the total Nordic regulation market was around 30%. It has not been possible to obtain information about the actual flow of regulating power between the Nordic countries. However, figures from Svenska Kraftnät show a considerable trade. In the period September 2002 - August 2003, Svenska Kraftnät sold regulating power for more than 176.9 MSEK and bought for around 358.5 MSEK.
55. For the purpose of this decision the precise scope of the geographic market can be left open, since the transaction will not lead to competition concerns on either a national or a Nordic basis.

2.c. Assessment

- Sweden

56. Svenska Kraftnät estimates the Swedish part of the overall regulation market to be 1.346 MSEK and around 5.7 million MWh in 2002. These figures comprise both regulation power and balancing power. Regulating power is used to maintain the balance of the frequency of the total power system, whereas balancing power is used to cover the deviations between contracted and actual supply and demand of each player.
57. Svenska Kraftnät procures primary regulation in two phases of packages of 20MW/Hz. According to Sydkraft, Svenska Kraftnät’s annual cost of primary regulation procurement has varied between 50-200 MSEK per year. According to information from Svenska Kraftnät Sydkraft and Gräninge had a combined market share of around [20 – 30]% in 2002. Since September 2002 the TSO no longer trade in regulating power. The regulation as explained above, is based on a common list of bids and is activated in the country with the lowest prices. It is difficult to calculate “national” market shares, since regulating power activated in one country might be used for regulation in another country. This implies at the same time, that prices are set on a transnational basis based on competitive bids.
58. The volume for secondary regulation comprising both upward and downward regulation amounted to 1.1 TWh in 2001-2002. Based on information from Svenska Kraftnät Sydkraft and Gräninge had a combined market share of around [15 – 25]%. The other suppliers were Vattenfall, Fortum and Skellefteå.
59. Considering the large amount of regulating power originating from especially Norway, the parties’ combined market share considering a Nordic market for regulating power, will be significantly lower than in Sweden and will not give rise to competition concerns.

60. The parties' combined market shares of around [20 – 30]% for primary regulation and around [15 – 25]% for secondary regulation only refers to regulating power originating in Sweden. Considering the large trade of regulating power between Sweden and its neighbouring countries, this transaction is not likely to create any competition concerns on the market for regulating power neither considering a market for primary regulation nor considering a market for secondary regulation.

- *Finland*

61. Every electricity producer in Finland has a balance responsibility; i.e. must balance its production and the consumption of its customers. Neither E.ON Finland nor Gräninge are balance providers to the Finnish TSO Fingrid. It can be concluded that the proposed transaction will not have an effect on the regulating power market in Finland.

62. The proposed transaction will not create any competition concerns on the regulating power market in Finland and no significant competition concerns on either the market for primary regulation power or on the market for secondary regulation power in Sweden or in the Nordic area.

3. Financial trading of electricity

3.a. Product market

63. Variations in precipitation and temperature can result in large variations in the electricity spot price. This means that there is a high risk associated with electricity trading. To reduce this risk, market players can hedge their purchases and sales with a time horizon of up to four years. Nord Pool's derivatives market covers futures, forwards, options and contracts for difference (cdf) with the system price as the reference price. Essentially the financial market has to do with the trading of risk rather than with electricity as such.

64. Sydkraft believes that all financial products offered on the Nord Pool and the OTC market belong to the same market, since futures, forwards, options and clearing services are used for price hedging and risk management. According to Sydkraft, financial and physical trading of electricity belong to the same relevant market because all financial contracts are using the system price from the Nord Pool.

65. The market investigation has not confirmed this. The majority of the replies state that the physical and the financial electricity trading are separate markets although they are closely linked having the system price as a common reference price.

66. In previous decisions, the Commission has found that electricity trading is a product market separate from other electricity markets.¹⁶ For the purpose of this decision, the precise product market definition can be left open, since the proposed transaction will not lead to competition concerns in any event.

¹⁶ See e.g. Commission decision of 30.11.1999 in case No JV.28 – Sydkraft/Hew/Hansa Energy Trading.

3.b. Geographic market

67. Sydkraft considers that the relevant scope of the financial market is at least Nordic, if not global, since the financial instruments do not require any electricity operations in the Nord Pool area. The results of the market investigation indicate that the geographic market should not be narrower than the Nord Pool area. For the purpose of this decision, it is however not necessary to define the exact scope of the geographic market, since the transaction does not strengthen or create a dominant position in either of the two proposed areas.

3.c. Assessment

68. In 2002, the volume of financial contracts traded at the Nord Pool market was 1,019 TWh and the volume of OTC/bilateral financial contracts cleared at the Nord Pool was 2,089 TWh, in total 3,108 TWh.

69. In 2002, Sydkraft traded approximately [135 – 145] TWh and Graninge traded approximately [15 – 25] TWh corresponding to market shares of respectively [0 – 10]% and [0 – 10]% based on the total traded volume.

70. More than 250 participants from Norway, Sweden, Finland and Denmark as well as some from Great Britain, the Netherlands and USA trade on the financial Nord Pool market. All trading is anonymous and all trade with Nord Pool as counterpart.

71. Taking into consideration the limited volume of the parties' combined trading activities the proposed transaction is not likely to affect the functioning of the financial markets.

4. Transmission and distribution of electricity

4.a. Product market

72. In previous decisions¹⁷, the Commission has found that transmission and distribution of electricity constitute separate markets. Transmission is carried out on different networks owned by different operators. No networks overlap. Both Sydkraft and Graninge own and operate transmission and distribution lines in Finland and Sweden. Access to the network is based on regulated third-party access obliging the operator to connect all customers who want to be connected to the network. The network authorities scrutinise network tariff and other terms on which network services are provided.

73. According to Sydkraft, transmission and distribution networks both constitute natural monopolies and thus no horizontal overlaps occur as a result of the transaction.

74. In the Nordic countries, the transmission and distribution of electricity is each usually regarded as a natural monopoly.¹⁸ The precise scope of the product market(s) can be left open, because the transaction does not give rise to competition concerns due to the regulated access to and control of the networks by the network authorities.

¹⁷ See e.g. Commission decision of 25.7.2002 in case No M.2890 – EDF/Seeboard, recital 10 with further references.

¹⁸ “A Powerful Competition Policy”, (cf. footnote 6.), p. 30.

4.b. Geographic market

75. Each network covers a separate geographic area constituting the geographic market for the network. However, the exact scope of the geographic market(s) can be left open, since the transaction does not give rise to competition concerns because of the regulated access to and control of the networks.

4.c. Assessment

76. Regardless of the fact that both Sydkraft and Granninge operate transmission and distribution networks, no competition concerns arise as a result of the transaction. Electricity producers have free access to the network and end-users have a free choice of electricity supplier no matter who owns/operate the network to which they are connected.

5. Supply to end-users

5.a. Product market

77. Sydkraft submits that electricity sale to the final consumer/supply of electricity to end-users irrespective of their consumption profile constitutes a separate product market and that this market should not be further sub-segmented. In Sweden and in Finland, all categories of customers are able to freely choose their supplier and there are no obstacles for establishing a sales company. The electricity itself is bought from an electricity supplier and with one month's notice the customer can change supplier. The contracts are normally standardised.
78. The market investigation has broadly confirmed Sydkraft's submission. However, many of the replies do suggest that the market could be divided into smaller segments, e.g. large industrial customers, smaller commercial customers and households because of different consumption patterns and prices, respectively.
79. However, for the purpose of this decision, the precise product market definition can be left open, because under all market definitions considered, the transaction does not give rise to competition concerns.

5.b. Geographic market

80. Sydkraft and Granninge are both active in supply to end-users in Sweden and Finland. Sydkraft believes that the geographic market is wider than national and possibly Nordic. Following the liberalisation of the Nordic electricity sector, a customer in any Nordic country may freely choose a supplier from another Nordic country. The access costs are equal to all, and since Denmark, Norway, Sweden and Finland form a joint electricity network, the players can trade freely in all the Nordic countries. Suppliers do not need to be present in the customer's country as long as the supplier has a balancing agreement with a balancing company in the same country as the customer.
81. Sydkraft's submission is not entirely confirmed by the market investigation. Very few replies support a Nordic end-user market. Instead, the large majority of replies – on both supply and demand side – states that the end-user market is still national in scope. The reason for this is two-fold: (i) no or almost no end-users are supplied by suppliers outside of their country of residence; and (ii) suppliers have to have a balancing agreement with a balance provider in the customer's country.

82. For the purpose of this decision, the precise geographic market definition can however be left open, because under all market definitions considered, the transaction does not give rise to competition concerns.

5.c. Assessment

83. On a Nordic market for supply of electricity to all end-users, the parties' combined market share is [0 – 10]% (Sydkraft [0 – 10]% and Gräninge [0 – 10]%) and the concentration does not give rise to an affected Nordic market and does thus not give rise to competition concerns.

84. There are approximately 120 electricity suppliers in Sweden, some of which are vertically integrated with an electricity producer, while others buy their electricity on the wholesale market (bilaterally or on the Nord Pool spot market).

85. According to Sydkraft, no official distinction is made between the different types of end-users. Following a suggested segmentation of the Swedish market into (i) households, (ii) large industry and businesses using between 50-500 GWh, and (iii) the rest (including small and medium sized companies, public authorities, agriculture etc), the household segment is estimated to represent [30 – 40] TWh, businesses [15 – 25] TWh and the rest [40 – 50] TWh.

86. In the household segment Sydkraft has sales of [0 – 10] TWh ([10 – 20]%) and Gräninge [0 – 10] TWh ([0 – 10]%) and their combined market share would thus be around [15 – 25]%. In the business segment, Sydkraft has sales of [0 – 10] TWh ([10 – 20]%) and Gräninge [0 – 10] TWh ([0 – 10]%) and their combined market share would thus be around [15 – 25]%. In the rest segment, Sydkraft has sales of [0 – 10] TWh ([10 – 20]%) and Gräninge [0 – 10] TWh ([0 – 10]%) and their combined market share would thus be less than [10 – 20]%.

87. Even though the four largest end-user suppliers have approximately 85% of the Swedish market, this does not give rise to competition concerns. The customers can switch suppliers with one month's notice and a Swedish study¹⁹ shows that 37% of the end-user customers have changed supplier or renegotiated their supply agreement. Internet based comparison tools are available. Barriers to entry appear to be relatively low.

88. Following the same suggested segmentation for Finland, the parties combined market shares are below [15]% in all three segments and do not give rise to an affected market.

6. District heating

6.a. Product market

89. District heating is distributed over separate networks owned by the local distributor. Different networks cover different geographical areas and cannot be connected to each other.

¹⁹ See "Elmarknaden 2002", p. 39, for reference.

90. Sydkraft submits that district heating networks constitute natural monopolies and are separate product markets – in line with previous Commission decisions²⁰ – and comprise the area covered by the network in question.

6.b. Geographic market

91. Sydkraft further submits that each individual network constitutes a relevant geographic market, 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 any alternative definition would effective competition be significantly impeded.

6.c. Assessment

92. In Sweden, Sydkraft distributes district heating principally in the cities of Malmö, Norrköping, Örebro, Mora and Timrå. The district heating activities of Grange are located principally in the Norrland and Mälardalen regions as well as the city of Kalmar. There are thus no overlaps between the district heating activities or the networks operated by the parties.
93. Total district heating supply in Sweden in 2001 amounted to 46.6 TWh. Currently, municipality owned heating companies control approximately 65% of the district heating in Sweden.
94. Sydkraft supplies annually approximately [0 – 10] TWh, corresponding to approximately [0 – 10]% of the total supply. The corresponding figures for Grange are [0 – 10] TWh and [0 – 10]%. Fortum and Vattenfall supply approximately [0 – 10] and [0 – 10] TWh respectively, corresponding to [10 – 20]% and [0 – 10]% of total supply.
95. When considering each network as a relevant geographic market, there would be no overlaps between the parties' district heating activities as the parties operate in different cities and/or regions in Sweden. When considering Sweden as the relevant geographic market, the combined market share of the parties would be approximately [10 – 20]%. Thus, under neither alternative definition would the operation give rise to competitive concerns.
96. In Finland, Sydkraft's activities are conducted in co-operation with E.ON Finland. E.ON Finland distributes district heating in Espoo, Kauniainen and Kirkkonummi. E.ON Finland has an annual production and sales of approximately [0 – 10] TWh, corresponding to a market share of [0 – 10]%.
97. Grange's district heating activities are located in the city of Kajaani, and corresponding figures for Grange are [0 – 10] TWh and [0 – 10]%. Helsinki Energia is the largest producer with approximately [25 – 35]% of the market for district heating in Finland.
98. When considering each network as a relevant geographic market, there would be no overlaps between the parties' district heating activities as the parties operate in different cities in Finland. When considering Finland as the relevant geographic market, the

²⁰ See Commission decision of 14.10.2002 in case No COMP/M.2897 – Sita Sverige AB/Sydkraft Ecoplus.

combined market share of the parties would be approximately [0 – 10]%. Thus, under neither alternative definition would the operation give rise to competitive concerns.

7. Gas supply

7.a. Product market

99. The Commission has in previous decisions recognised that the supply of gas constitutes a separate product market.²¹ For the purpose of this decision, it is not necessary to define different product markets for large and small domestic customers since this case does not give rise to competition concern under any of the alternatives.

7.b. Geographic market

100. Both Sydkraft and Graninge are active on the market for supply of gas. However, Sydkraft is only active in Sweden and Graninge is only active in Finland. The Commission has in previous decisions defined the geographic market for the supply of gas to be national in scope.²²

7.c. Assessment

101. Since Sydkraft is only active in Sweden and Graninge is only active in Finland the transaction will not result in any horizontal overlaps on a national basis and thus the proposed operation will not give rise to competition concerns.

VI. CONCLUSION

102. 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

²¹ See e.g. Commission decision of 25.7.2002 in case No COMP/M.2890 – EdF/Seeboard recital 42 with further references.

²² See Commission decision of 18.12.2002 in case No COMP/M. 3007 – E.ON/TXU Europe Group, recital 27.