

***Case No COMP/M.3291 -
PREEM /
SKANDINAVISKA
RAFFINADERI***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/12/2003

*Also available in the CELEX database
Document No 303M3291*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01/12/2003

SG (2003) D/233146

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3291 – PREEM/SKANDINAVISKA RAFFINERADI
Notification of 28.10.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 28/10/2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Preem Petroleum AB (“Preem”, Sweden) belonging to the group Moroncha Holdings Company Limited (Cyprus) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Skandinaviska Raffinaderi AB (“Scanraff”, 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 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. Preem is the largest Swedish oil company. Besides its 75% stake in Scanraff, Preem owns a second refinery, Preemraff, located in Göteborg, Sweden. Preem is active in the wholesale and retail distribution of refined oil products (petrol, diesel, gas oils and fuel oils) through Preem's own marketing organisations, fully owned subsidiaries and petrol stations. Preem operates a nation wide network of 530 petrol stations in Sweden.

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).

4. Scanraff is an oil refinery located in Lysekil, also located on the west coast of Sweden. Scanraff is currently jointly controlled by Preem and Norsk Hydro. They hold 75 % and 25 % of the shares respectively.

II. THE OPERATION

5. The operation consists in the purchase by Preem of the 25 % shares that Norsk Hydro holds in Scanraff. Preem will also acquire certain stocks of refined petroleum products and, subject to novation agreements, certain short-term contractual supply obligations. Norsk Hydro will exit the refining sector, but will remain in the retail sector, [...]. The current situation is that each of the parties has rights to the output of the refinery in proportion to their shareholding.

III. CONCENTRATION

6. As a result of the proposed transaction Preem will acquire 100 % control over the Scanraff refinery. It follows that the notified transaction constitutes a concentration pursuant to 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 billion² (Preem EUR [...] million, Scanraff EUR [...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (Preem EUR [...] million, Scanraff EUR [...] 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.

V. COMPETITIVE ASSESSMENT

INTRODUCTION: THE REFINING ACTIVITY AND THE SALES OF OIL REFINED PRODUCTS

8. An oil refinery is the process plant in which the raw material, crude oil, is converted into usable finished products. If refining may be referred to as the manufacturing phase in the oil industry, the other phases are exploration and production, in which crude oil is found and extracted prior to refining; shipment, in which crude oil is transported from the production source to a refinery and, finally, distribution and marketing, in which the refined products are delivered to consumers.
9. Refined products are sold through either the retail distribution channel or the non-retail distribution channel. The retail channel involves sales through service stations. The non-retail sales consist of wholesales to independent resellers or retailers not integrated upstream (e.g. unbranded service station operators such as hypermarkets) as well as to large industrial and commercial consumers (hospitals, car rental fleets, factories, etc.). Refined products are supplied by refiners or other market players (traders etc) having at their disposal large volumes of refined products.

² 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.

10. The acquisition by Preem of the remaining 25% share in the Scanraff refinery results in an addition to Preem's refining capacity. Consequently, Preem will, in the long term, have at its disposal an increased volume of refined products. This additional volume could be offered to the non-retail market or sold through its own service station network. The transaction requires therefore an analysis of the horizontal effects in crude oil refining and in non-retail sales. It requires also an analysis of the vertical effects with respect to the retailing activity.

V.I - THE RELEVANT MARKETS

V.I.A - PRODUCT MARKET

- Crude oil refining
11. The Commission has suggested in the past that crude oil refining constitutes a separate market³. However, this market is closely linked to the activity for non-retail of refined products carried out at ex refinery level. In any case, it is not necessary to determine whether a crude oil refining market exists separately from non-retail fuel sales as no competition problems arise on either market.
 - Retail sales of refined oil products
 12. The Commission has dealt in several occasions with the distribution of fuels⁴. In its practice, the Commission has separated the retail channel from the non-retail channel. The retail motor fuels sales include sales made to automotive customers from branded and unbranded service stations. The products sold are predominantly gasoline and diesel. From the demand side, there is no substitutability between these products as motorists must use the type of fuel appropriate to their vehicle. However, in the supply-side perspective, both products are always available at the distribution level at the same point of sales. As a consequence, the Commission has interpreted in the past that in the retailing channel the relevant product market is constituted by the retail sales of motor fuels with no need of a further distinction⁵. In the present case, there is no need to decide whether there is a single market for retail fuels or several markets as which ever alternative definition is used no competition problems will arise.
 - Non-retail sales of refined oil products
 13. In previous decisions the Commission has stated⁶ that the non-retail sales of each of the refined products in question (leaded and unleaded gasoline, diesel fuel and domestic heating oil) constitutes a distinct relevant product market. These products are not substitutable for each other in terms of demand.

V.I.B - GEOGRAPHIC MARKET

³ IV/M.727 - BP/Mobil, par. 28.

⁴ IV/M.727 – BP/Mobil , IV/M.1383 - Exxon/Mobil, COMP/M.1464 – Total/Petrofina(II), COMP/M.1628 – Totalfina/Elf

⁵ COMP/M.1464 – Total/Petrofina(II), par. 7.

⁶ COMP/M.1628 – Totalfina/Elf par. 27.

- Crude oil refining

14. The notifying party submits that the geographic scope of the crude oil refining market is Community wide or at least North West Europe (NWE)⁷. On the basis of the significant imports and exports between the Scandinavian countries and the high level of overall imports, it is reasonable to conclude that the relevant geographic market is at least Scandinavian (meaning here Finland, Norway, Sweden and Denmark). Under none of these possible market definitions would the present case raise competition concerns.

Table 1: Overall imports as percentage of demand

	Finland	Norway	Sweden	Denmark
Gasoline	15 %	25 %	42 %	52 %
Gas Oil / Diesel	39 %	14 %	36 %	46 %
Fuel Oil	40 %	229 % ⁸	17 %	57 %

Table 2: Imports from other Scandinavian countries as percentage of demand

	Finland	Norway	Sweden	Denmark
Gasoline	15 %	23 %	23 %	43 %
Gas Oil / Diesel	4 %	10 %	24 %	30 %
Fuel Oil	27 %	29 % ⁹	4 %	14 %

- Retail sales of refined oil products

15. In the past, the Commission has regarded the market for retail sales as being national¹⁰. This conclusion has been based on three main elements; differences in national levels of taxation of fuels, the overlapping catchment areas of the various individual service stations and supply side considerations including nationally organised sales companies product ranges. In the present case, the definition of the geographical market can remain open as no competition concerns arise under any of the alternative market definition. The concentration does not have horizontal effects in this market and no vertical foreclosure concerns arise whether the geographical market is defined as being national or narrower than national.

- Non-retail sales of refined oil products

16. In this case, the notifying party proposes the Scandinavian region as the relevant geographic market. This view is supported by the fact that as much as 55% of Preem's

⁷ Scandinavia plus Belgium, Northern France, Germany, Ireland, Netherlands, UK.

⁸ Norway imports fuel oil as refinery feedstock.

⁹ Norway imports fuel oil as refinery feedstock.

¹⁰ Cases IV/M.1383 - Exxon/Mobil, par. 440 – 441.

sales originating from its Scanraff and Preemraff refineries is destined for export markets essentially in Scandinavia. Moreover, as shown on the tables 1 and 2, in 2002 imports of each of the oil refined products were significant in each individual country. All of the competitors replying to the Commission's market investigation have indicated that the geographical area to which they can realistically give offers at the non-retail level is generally wider than the Scandinavian region.

17. Having regard to the importance of the external trade in the area considered, the Commission has concluded that the relevant geographical market for the purpose of the present transaction is at least the Scandinavian region.

V.II - ASSESSMENT

V.II.A - HORIZONTAL EFFECTS

- Crude oil refining

18. The table below shows the market shares (based on the refining capacity) of the parties and those of their major competitors after the transaction at NWE and Scandinavian level. Well known players in the oil refining sector such as Shell, ExxonMobil, Statoil and Fortum are have significant presence in both areas. The Commission concludes that the transaction will not lead to the creation or strengthening of a dominant position on the market for crude oil refining.

Table 3: Crude oil refining market.

Market shares of main competitors in the NWE and in the Scandinavian region.

Area	Shell	Exxon Mobil	Statoil	Fortum	Preem
NWE	[10-20] %	[10-20] %	[0-10] %	[0-10] %	[0-10] %
SCANDINAVIA	[10-20] %	[0-10] %	[20-30] %	[20-30] %	[20-30] %

Source: Form CO.

- Non-retail sales of refined oil products

19. As a result of the proposed transaction Norsk Hydro will exit the business of refining crude oil and Preem will acquire 100% control over the Scanraff refinery, an additional capacity of [...] million m³. The proposed concentration will not have appreciable *immediate* effects as approximately [...] % of the additional capacity is already engaged in supply agreements with Norsk Hydro and certain assigned contracts. In the long term, however, Preem will be able to increase its non-retail sales by using the capacity currently controlled by Norsk Hydro.
20. Accordingly, the transaction brings about a horizontal overlap in the market of non-retail sales for gasoline, diesel, gas oil and fuel oil in the Scandinavian region. However, as shown on the following table (which has been prepared on the basis that Preem's additional sales would be the same as Norsk Hydro's current sales), the presence of powerful competitors as Shell, Statoil, or Fortum ensures the availability of choice in the marketplace. The Commission concludes that the transaction will not lead to the creation or strengthening of a dominant position on the market for non-retail sales for gasoline, diesel, gas oil and fuel oil.

Table 4: Non-retail market for gasoline, diesel, gas oil and fuel oil.

Market shares of main competitors in the Scandinavian region.

Nonretail Market	Preem (including 75% Scanraff)	Norsk Hydro 25% Scanraff	Combined	Statoil	Fortum	Shell	Esso	Former USSR
Gasoline	[10-20] %	[0-10] %	[20-30] %	[20-30] %	[20-30] %	[10-20] %	[0-10] %	[0-10] %
Diesel	[20-30] %	[0-10] %	[20-30] %	[20-30] %	[20-30] %	[20-30] %	[0-10] %	-
Gas Oil	[0-10] %	[0-10] %	[10-20] %	[10-20] %	[10-20] %	[10-20] %	[0-10] %	[10-20] %
Fuel Oil	[20-30] %	[0-10] %	[30-40] %	[0-10] %	[10-20] %	[20-30] %	[0-10] %	[0-10] %

Source: Form CO.

V.II.B - VERTICAL EFFECTS

21. Preem operates a nation wide network of 530 petrol stations in Sweden. Petrol stations source internally their needs of refined oil products, gasoline and diesel, for automotive customers if the company is vertically integrated or otherwise through the non-retail channel. Preem is also active on the non-retail market, as explained above. The Commission therefore examines if the proposed concentration may cause any possible restraint of the availability of refined oil products.
22. As shown in table 4, Preem will continue to face competition from competitors such as Shell, Statoil, or Fortum among others in the non retail channel. Customers will continue then to have access to several alternative supplies.
23. In addition, the structure of the retail channel will remain competitive since the competitors in this segment are also important companies including Shell, Statoil, OK-Q8 and Norsk Hydro, some of them vertically integrated.
24. The competitive structure of the market for retail sales of motor fuels in Sweden, the only country in which Preem has retail operations, is shown on table below. The table below sets out the situation in Sweden for the individual markets for gasoline and diesel and for the combined market.

Table 5: Retail sales market for gasoline and diesel.
Market shares of main competitors in Sweden.

Company	Gasoline %	Diesel %	Overall %
Norsk Hydro	10,6%	14,6%	12,2%
Jet	10,3%	0,0%	6,2%
OK-Q8	27,1%	12,3%	21,2%
Preem	11,4%	31,8%	19,6%
Shell	13,0%	19,2%	15,5%
Statoil	23,0%	18,3%	21,1%

Other	4,6%	3,8%	4,3%
-------	------	------	------

Source: Swedish Petroleum Institute.

25. In view of the above, the Commission concludes that the transaction will not lead to the creation of any effect of foreclosure in relation to the downstream market of retail sales of fuels, nor to any other vertical effects liable to create or strengthen a dominant position.

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, signed,
Mario MONTI
Member of the Commission