EN

Case No IV/M.511 - Texaco / Norsk Hydro

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.1.1995

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case N° IV/M.511 - Texaco/Norsk Hydro
Notification of 1.12.1994 pursuant to Article 4 of Council Regulation N° 4064/89

I. INTRODUCTION

1. On 1 December 1994 the Commission received a notification under the Merger Regulation, concerning the acquisition by Texaco a/s (DK) and Norsk Hydro a.s. (Norway) of a joint venture (JV) operating in the business of distribution of i.a. refined oil products. The notification has been made jointly by Texaco Inc., the mother company of Texaco a/s, and Norsk Hydro a.s.

II. THE PARTIES

2. Texaco a/s (DK) ("Texaco") belongs to Texaco Inc., a worldwide fully integrated oil company. Texaco is active in the field of exploration and production, and operates refineries, trading companies and distribution companies.

3. Norsk Hydro a.s (Norway) ("Norsk Hydro") is also a fully integrated oil company active in the field of exploration and production owning refinery capacity, running a trade company and operating distribution companies. In addition, it is among others active in the production and sale of fertilizers, and in the production and trade of aluminium products. Norsk Hydro is controlled by the Norwegian State, which holds 51% of its shares.

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III. THE OPERATION

4. The operation consists of the creation of JV by Texaco Inc. and Norsk Hydro.

The parties will combine their activities in the field of distribution of gasoline, diesel, heavy fuel oils and lubricants and activities incidental to the operation of service stations, such as the sale of anti-freeze and automotive accessories. The activity of the JV will be limited to Denmark (including Greenland and the Faroe Islands), Norway and Iceland. [...][1].

The mother companies will withdraw from these businesses in Denmark, Norway and Iceland.

IV. CONCENTRATION

Joint control

5. The joint venture shall be 50% owned by each of the parent companies who shall have joint control of the joint venture. According to the Shareholders Agreement, the board of the directors will decide the most important issues and strategic decisions related to the running of the joint venture. These include: business plan and budget; investments; major supply or service agreements. All resolutions of the Board of Directors will need the consent of both parents.

Full function joint venture

<u>The market of the JV: distribution market</u>

6. The joint venture will operate on the following two distribution markets: (i) distribution and sale of diesel and oil for heating purposes and lubricants directly to end-users, and (ii) distribution and sale through service stations of gasoline, diesel and lubricants and other activities incidental to the operation of service stations. For the purpose in this section - to assess the concentrative and cooperative aspects of the operation - it is not necessary to make a distinction of the two markets; as a rule all the distribution companies operate on both markets. In the following, the term "distribution" refers to the functions on both markets mentioned above.

7. Distribution of oil products in Norway and Denmark constitutes a separate market in which there are several distribution companies in Norway and Denmark (including non-integrated companies but only in Denmark), which specialise in the selling and distribution of oil products and which are sourced by many different suppliers. The distribution companies purchase the products in large quantities on the upstream market and sell on in smaller quantities. To do so they have to operate storage and transport facilities, service stations and employ personnel specialised to run these activities and, consequently, the distribution activities add considerable value to the products in question.

8. On the market for distribution of oil products the joint venture, which comprises two existing companies, will have all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity, including storage and

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[1] Deleted as business secret.

transport facilities, 476 company-owned and 676 dealer-owned service stations and marketing resources.

The upstream trading market: supplies of refined products by traders to distribution companies

9. The upstream trading market comprises the business of purchasing refined oil products from refineries and selling the products to distribution companies, either according to a long-term contract or "spot". Fully integrated oil companies as well as independent companies operate trade companies. As a rule, the trade companies belonging to integrated oil companies purchase the products not only from the parents' refineries, but also from refineries belonging to other companies and, in addition, also sell the products to distribution companies which are not owned by the parents.

10. The joint venture will get supplies from its parents but, as will be shown, it is likely that it will obtain a substantial proportion of its supplies from other trading companies. The distribution companies of Norsk Hydro and Texaco purchase from their parents the following percentages of refined oil products in relation to their total purchases:

	Hydro distribution (purchase from parent) % of total purchase		Texaco distribution (purchase from parent) % of total purchase	
	Denmark[2]	Norway[3]	Denmark[4]	Norway[5]
1992	[...]	-	[...]	[...]
1993	[...]	[...]	[...]	[...]
1994	[...]	[...]	[...]	[...]

These figures show considerable variations in the amount of supplies by the parents, which reflect the competitive conditions prevailing in the market for supply even to "own" distribution companies. As a rule, the supply contracts run for one year, and, for instance, for 1995 Esso Norway has got a contract for substantial supplies to the JV at the expense of Norsk Hydro's trading company.

Other important suppliers of the respective distribution networks of the parents have been Statoil ([...][6] Texaco's total purchase from 1992 to 1994; [...][6] Norsk Hydro's total purchase), Esso ([...][6] Texaco Norway and [...][6] Norsk Hydro Norway) and Dofas ([...][6] for Norsk Hydro Denmark).

11. The Texaco group owns several Northern European refineries but none in the Scandinavian area. For commercial reasons oil products refined on Texaco's refineries are not sold in the Scandinavian area and, consequently, Texaco's distribution companies in Denmark and Norway does not purchase products which

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2 Exact figures deleted as business secrets. Around 50%.
3 Exact figures deleted as business secrets. Between 25 and 40%.
4 Exact figures deleted as business secrets. Around 75%.
5 Exact figures deleted as business secrets. Between 40 and 75%.
6 Exact figures deleted as business secrets.

come from Texaco' refineries. However, Texaco's distribution companies in Denmark and Norway purchase parts of their requirements from Texaco trading companies, which are in the business of buying products from refineries and selling it on to distribution companies. The Hydro group owns refinery capacity in Scandinavia (Hydro owns 21,5% of the Swedish refinery, Scanraff) and Hydro's distribution companies in Denmark and Norway are partly supplied by products coming from that refinery. It is the parents intention to continue to trade with the joint venture. However, this trade will be on an arm's length basis and it is not likely that the operation will give rise to a change in the extent of supplies from the parents to the two joint venture companies. For 1995 the parties have estimated that the parents will supply the joint venture companies in Denmark and in Norway with approximately [...][7] and [...][8] respectively of the joint ventures total needs of refined oil products.

12. For the above mentioned reasons, the joint venture can be regarded as a full-function joint venture operating on a separate distribution market and performing the functions normally carried out by other undertakings operating on the same market.

Absence of coordination of competitive behaviour between the parents

<u>No coordination on the market of the JV: distribution market</u>

13. There is no scope for coordination on the distribution market in Denmark and Norway since both parents will withdraw from all distribution activities in that geographical area. Furthermore, there is no scope for coordination neither at the borders (Norway/Sweden and Denmark/Germany) nor at a broader European basis since Texaco is not present in Sweden and Hydro is only present in Denmark, Norway and Sweden.

<u>No coordination on the upstream market :trading market</u>

14. Both parents are present on the upstream market of supply of oil products by trading companies to distribution companies; however, it has to be taken into consideration that the two parent companies are very different players on this market. The purpose of Norsk Hydro's trading activities, which are concentrated on the Scandinavian market, is to transport refined oil products produced at Scanraff, firstly Hydro's distribution companies in Denmark, Norway and Sweden and, secondly, to other companies not belonging to Hydro. Occasionally, Hydro's trading company purchases small quantities of oil products from from other Scandinavian refineries but then only for the purpose of supplying its distribution companies. In contrast, Texaco conducts a business of trading in Scandinavia by buying all the refined oil products from refineries belonging to other companies and selling them to its own or other distribution companies.

15. Information from competitors shows that only small quantities of refined oil products consumed in Scandinavia are imported from non-Scandinavian refineries. This is mainly because there is an excess of refining capacity in Scandinavia (which has been the case since 1975) and products are available in sufficient quantities. Since transport costs is an important factor the Scandinavian refineries will have an competitive advantage in this area and in most cases it will be uneconomical for

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[7] Exact figures deleted as business secrets. Around 50%.

[8] Exact figures deleted as business secrets. Around 25%.

non-Scandinavian refineries to transport products to the Scandinavian countries. In this case, therefore, the relevant geographical market for supply of refined oil products by trading companies to distribution companies can be considered to be Scandinavia.

16. Of the Texaco trading company's total sales of refined products on the Scandinavian market in 1994, [...][9] went to the Texaco distribution companies in Denmark and Norway. For 1995, Texaco estimates that the figure will be approximately the same. As for Norsk Hydro's trading company, in 1994 [...][10] of its total sales of refined oil products on the Scandinavian market was sold to Norsk Hydro's distribution companies in Norway and Denmark. For 1995, Norsk Hydro estimates that [...][11] of the trading company's total sales will be sold to the joint venture. Consequently, the JV will not be the main customer of each of the parents. [...][12]

17. Taking into account the fact that the JV will not be the main customer of each of the parents, the very different character of the the two parents' activities as well as their limited presence (on the Scandinavian market for supply of refined products by trading companies Texaco and Hydro have market shares of approximately 3% and 6% respectively) on the upstream market for supply of refined oil products to distributors, there is no realistic scope for coordination between the parents on this upstream market.

V. COMMUNITY DIMENSION

18. The concentration will have a Community dimension. The combined aggregate turnover of Texaco and Norsk Hydro in 1993 exceeded ECU 5.000 million. The aggregate Community turnover of each of them was also higher than ECU 250 million and the two companies did not achieve more than two-thirds of their respective Community-wide turnover in one and the same Member State.

VI. RELEVANT PRODUCT MARKETS

19. The market on which the JV operates is the distribution of gasoline, diesel, heavy fuels and lubricants (all together refined oil products).

20. The distribution to the end user of these products can be achieved through two different channels:

    i. either, the products are delivered, at the care of the distribution company (in this case, the JV) from the terminals or depots directly to the end user,

    ii. or they are transported, at the care of the distribution company, from these terminals or depots to the service stations, which in their turn sell the products directly to the consumer.

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9 Exact figures deleted as business secrets. Around 60%.
10 Exact figures deleted as business secrets. Between 10 and 20%.
11 Exact figures deleted as business secrets. Less than 15%.
12 Information deleted as business secret.

21. Gasoline, is distributed mainly through service stations (for 98% of the total demand in the countries concerned by the operation). It is mainly used by cars.

Diesel is distributed in both the manners indicated at point 20.

The first way of distribution (illustrated at point 20.i.), which accounts for approximately 50% of the total demand of this product in the countries concerned by the operation, applies either when delivered to large customers (for example, transport companies) or when diesel is used for heating purposes, and it is thus delivered by the distribution company directly to the customer.

The second way of distribution (illustrated at point 20.ii), which accounts for the remaining 50% of the total demand, is used when diesel is used in cars or trucks, and is delivered through the service stations.

Heavy Fuels, which is needed for heating purposes, is mainly sold directly from the depots or terminals to the end users by way of trucks (as per point 20.i).

Lubricants are sold by service stations, supermarkets etc. and directly to large end users.

22. Distribution of refined oil products and lubricants is basically a service[13]. Thus, the affected markets are to be considered:

i) the distribution of refined oil products and lubricants from the depots and terminals directly to the end users by way of trucks;

ii) the distribution of refined oil products and lubricants by way of service stations.

23. In this perspective, the further assessment of the proposed operation will have to be based more on the type and characteristics of the service rendered than on technical or physical distinctions of the product sold.

VI. GEOGRAPHIC REFERENCE MARKET

Deliveries by trucks

24. The relevant geographic market for the service consisting in deliveries by trucks from the terminal or depots to the end user is considered to be at least regional and in some cases national.

From the end user's point of view, this kind of distribution is essentially a national or in some cases a regional activity; what in practice happens is that the end user calls by phone or letter the company in charge of this distribution, which then will deliver the products directly at the premises or houses indicated.

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13 See, for a similar position, CAMPSA decision of 19.12.1991 (IV.M.138) and Elf Aquitaine-Thyssen/Minol (decision of 4.9.1992 IV.M.235).

Depending on the company providing this service, it will have either one office in the country concerned (which in this case can be either Denmark or Norway) or more offices spread at a regional level.

Deliveries by service stations

25. The relevant geographic market for the service consisting in deliveries to the consumer by service stations is considered to be local.

From the end user's point of view, this kind of distribution is essentially a local activity, as consumers' choices are restricted by transport constraints.

VII. ASSESSMENT

26. As mentioned, the Norwegian State owns 51% of Norsk Hydro. In this connection it has ben relevant to investigate whether Norsk Hydro operates as an autonomous entity independently of the Norwegian State because the State owns 100% of Statoil, which is the major player on the same markets where the JV will operate.

Norsk Hydro has declared that the Norwegian State does not take and has not taken part in decisions regarding Norsk Hydro's commercial activities and that there are no formal or informal relations between Norsk Hydro and Statoil at any level pertaining to their position as companies in which the Norwegian State is a shareholder. As a result of its investigation, the Commission has grounds to believe that the commercial activities of these two companies are not coordinated through the intervention of their common shareholder, the Norwegian State. This leads to the conclusion that the market position of Norsk Hydro has to be evaluated independently from that of Statoil.

Consequently, for the purposes of this assessment, Norsk Hydro is to be regarded as an autonomous economic unit with an independent power of decision separate from Statoil, irrespective of the capital holding of the Norwegian State in both companies.

27. Before the common acquisition of the JV, the parties' presence on the relevant markets as defined above, in relation to the presence of the other competitors, was the following (based on number of outlets):

Deliveries from the terminals to the consumer

Denmark[14]

Texaco + Norsk Hydro	Statoil	Shell	Q8	OK	Others
±15%	±20%	±15%	±10%	±5%	±30%

Norway[14]

Texaco + Norsk Hydro	Statoil	Shell	Esso	Fina	Others
±20%	±20%	±25%	±25%	±5%	±10%

Service stations market

Denmark[14]

Texaco + Norsk Hydro	Statoil	Shell	Q8	OK
±25%	±15%	±15%	±20%	±10%

Norway[14]

Texaco + Norsk Hydro	Statoil	Shell	Esso	Fina
±20%	±25%	±20	±20%	±15%

Following the acquisition, the parties combined market shares on the above markets will be:

14 Exact figures deleted as business secrets.

Deliveries from the terminals to the consumer

Denmark [±15%][15]
Norway [±20%][15]

Service stations market

Denmark [±25%][15]
Norway [±20%][15]

28. These shares at the level of the whole territory of Norway and Denmark are substantially the same at the regional or local level; in both countries the presence of the parties' service stations and depots and terminals is homogeneously spread, together with that of a sufficient number of competitors.

29. On the affected markets the presence of the parties does not exceed 25%, and there are a sufficient number of important competitors, like Shell, Esso, Statoil. It is thus concluded that the creation of the JV does not give rise to doubts as to its compabitility with the common market and the EEA-Agreement.

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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 functioning of the EEA agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No 4064/89 and Article 57 of the EEA Agreement.

For the Commission

[15] Exact figures deleted as business secrets.