EUROPEAN COMMISSION
Competition DG

Directorate B - Merger Task Force
The Director

Brussels, 07/04/2004 * 4739

In the published version of this letter, 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

PUBLIC VERSION

MERGER PROCEDURE
COMMITMENTS

Subject: COMP/M.1980 - Volvo/Renault RVI
The Scania Undertaking

Dear Sir, Dear Madam,

I write to inform you of the Commission's decision in respect of the following matters relating to the implementation of the Scania Undertaking upon which the Commission's clearance of the acquisition of Renault RVI by Volvo in 2000 is conditional.

1. The divestiture of the Scania B-shares

On 5 March 2004, Volvo announced[1] that *"as a part of Volvo's commitment to the European Commission"*, it had sold 63.7 million B-shares, corresponding to about 5.8% of the votes and 31.8% of the share capital it owned in Scania, to Deutsche Bank AG ("DB").

Upon examining your agreement with DB and in the light of the confirmation adduced by you from DB, we acknowledge that the above-mentioned shares were sold to DB with trade date 4 March 2004 for settlement on 9 March 2004 at a price of [approximately SEK 15 billion].

In the light of the said disposal, your request of 16 June 2003 for an extension of the deadline in respect of the Scania B-shares has become without object. We note however that Volvo requests the Commission to take a position on its extension request notwithstanding the said disposal of the B-shares. For the sake of completeness, the Commission confirms that you failed to show good cause for the extension of the deadline in respect of the B-shares. In particular, the sale of the B-shares took place at a price level (at least SEK […] per share) close to break even as confirmed by Mr. Leif Johansson, CEO of Volvo, in a statement

[1] See Volvo's press release of 5 March 2004.

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reported on 5 March 2004[2] indicating that "*if dividends received from Scania during the period were taken into account the deal could be seen as breaking even*". In addition, the price achieved is close to the price level (SEK […] per share) at which the Commission's independent expert advisors indicated in their report of 5 March 2004 that "*if Volvo had applied all the reported income from its investment in Scania against the book value of the Scania shares, the current book value per share could potentially be as low as SEK* […] *versus the 31 December 2002 book value of SEK 264*".[3] In fact, at a price of SEK […] per share, the maximum potential loss that Volvo could have incurred on the sale of the B-shares amounts to SEK […] per share or around SEK […] in total which is negligible when compared to the amount of the potential losses arising from a sale of the B-shares claimed by Volvo as at 16 June 2003 of around SEK […].[4] As you know, the Commission's independent expert advisors concluded in their report that, even at a price level of SEK 190 per share, the disposal of Volvo's stake in Scania would not noticeably impact on Volvo's ability to borrow and invest nor would it threaten its independence. Therefore, a placement of the Scania B-shares at a significantly higher price level cannot have any significant impact on Volvo's competitive position. Moreover, under the Scania Undertaking, Volvo has no legitimate expectation to any minimum price since the second period (i.e. 24 April 2003).

2. The divestiture of Scania A-shares

On 3 February 2004,[5] Mr. Leif Johansson declared that if a sale (to an industrial or financial buyer) was not agreed or an extension of the divestiture period was not awarded by the Commission, Volvo intended to transfer the 27.3 million A-shares it still holds in Scania, representing 24.8% of the votes and 13.7% of the share capital, to a separate, newly formed company called "Ainax" that will have the sole purpose of managing Volvo's shareholders' interests in Scania.

According to its Ainax plan communicated by Volvo to the Commission on 19 March 2004, Volvo undertakes to propose to its shareholders, on the occasion of Volvo's shareholders' meeting to be held on 16 April 2004 i.e. before the 23 April 2004 deadline, a motion that approximately 27.1 million shares in the subsidiary Ainax is distributed to the Volvo shareholders on 1 June 2004.[6] The proposed motion, if passed, will result in the distribution of 99.1% of Ainax to Volvo's shareholders. Since, for purely mathematical reasons they could not be distributed, the remaining 0.9% of Ainax would be sold in the market as soon as the trading in the Ainax shares is organised, i.e. by 8 June 2004 at the latest, which is the date that

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2 See "*Volvo sells Scania stake for SKr15bn*" by Nicholas George in Stockholm, Financial Times, 5 March 2004.

3 Volvo reduced the book value of its Scania holding in 2000 by the amount of the dividends received. The decision to reduce the book value of its Scania holding came after the European Commission ruled against its proposed acquisition of Scania (See Templeton Blake Report, pages 31 and 32).

4 This is calculated on the basis of a realised price per share of SEK […] in respect of 63.746 million Scania B-shares as compared to a book value of SEK 264 (excluding any off set from Scania dividend after 2000) as assumed in Volvo's submission of 31 March 2003.

5 See Volvo's press release of 3 February 2004.

6 The Ainax shares will be registered on owner-registered shareholders VP-accounts on 8 June 2004. See Notice of Annual General Meeting of AB Volvo published on 18 March 2004.

corresponds to the end of the 90-day lock-up period demanded of Volvo by DB as part of the sale of the B-shares to DB.

In addition, Volvo submits that Ainax will be totally independent from Volvo as there will be no agreements between Ainax and Volvo, and Volvo will retain no special rights, financial exposure or obligations linked to Ainax or the Scania A-shares held by Ainax. In addition, Volvo indicates that it will have no representation on the Board of Directors of Ainax, and that there will be no reporting requirements from the management or Board of Ainax to Volvo. Volvo further indicates that the Ainax Board of Directors will consist of at least three and no more than five members (including the President) of whom two have already been identified as Mr. Tuve Johannesson, Chairman of the Hans Rausing family foundations, and Mr. Shemaya Levy, former CFO of Renault SA that will own approximately 20.9% of Ainax.

Although the Ainax structure is an indirect way of achieving the divestiture envisaged in the Scania Undertaking, it is nevertheless not excluded by the original Scania Undertaking which foresaw a dividend to shareholders as equating to a divestiture under the following terms: *"for the purposes of this undertaking a decision by [Volvo] to distribute the [Scania] shares to its shareholders in the form of a special dividend or any other form shall be considered as a divestiture"* (Section 4).

However, the Commission's approval of the Ainax structure:

(a) is based on the accuracy and completeness of the factual premises underpinning Volvo's various public statements and submissions made to the Commission between 19 March 2004 (the date of Volvo's formal submission of its proposals to the Commission) and the date of this letter, in particular with regard to Volvo's representations that Ainax will be publicly traded on a recognised stock market; and

(b) is on condition that Ainax is in law and in fact independent from any influence by Volvo in terms of:

    (i) its ownership structure: to ensure this, Volvo may not own any shares in Ainax [at the time of the special general meeting mentioned in (ii) below]. In other words, the deadline for divestiture of 0.9% of Ainax owned by Volvo after the distribution of the Ainax shares is hereby extended to […];

    (ii) its Board composition: to ensure this Volvo must ensure that Ainax is bound to provide that the appointment of members of the Ainax Board, appointed prior to the distribution of the Ainax shares to the Volvo shareholders, is put to the vote of the Volvo shareholders who become Ainax shareholders on 1 June 2004 in a special general meeting of those shareholders to be held no earlier than 1 July 2004 and no later than 1 September 2004. Volvo must also ensure that Ainax does not propose or nominate any directors to the Board of Scania until the said special general meeting has taken place and the Ainax nominations have been ratified by the shareholders of Ainax;

    (iii) its capital structure: given that Ainax will be a holding company with no trading activities of its own, Volvo must ensure that Ainax has sufficient funds to cover its running costs for at least one year from 8 June 2004;

    (iv) Volvo exerts its reasonable best efforts to ensure that Ainax Management and Board Members are completely independent from the Volvo group of companies in terms of employment, representation, Management or Board membership, share ownership, stock option plans rights, pension rights, and the like without limitation; and

(v) Volvo may not directly or indirectly share its seat, office premises, management or staff, external advisors including without limitation any legal counsel, auditors, investment bankers, management consultants and the like with Ainax or any member of the Ainax group of companies (if any).

In the light of the said proposed distribution, your request of 16 June 2003 for an extension of the deadline in respect of the Scania A-shares has also become without object. We note however that Volvo requests the Commission to take a position on its request for an extension notwithstanding the said distribution of the A-shares. For the sake of completeness, the Commission confirms that you failed to show good cause for the extension of the deadline in respect of the A-shares. In particular, the distribution of the A-shares can have no significant impact on the competitive position of Volvo since the A-shares represent only around 1/3 of Volvo's original total capital holding in Scania and, as such, reduces by 3 any of the impacts claimed by Volvo on 16 June 2003 which are further reduced by the sale of the B-shares for around SEK 15 billion.

Moreover, […], preferring to distribute these shares to its shareholders in part so as to "*provide Volvo's shareholders the possibility to realize the added value that exists in a large block of A-shares and to fully exercise the influence in Scania that is inherent in the high voting rights carried by A shares*".[7] As you know, in this regard, in their report, the Commission's independent expert advisors concluded that a share placement at SEK 190 would not noticeably impact Volvo's ability to invest and borrow nor its independence.

In any event, under the Scania Undertaking, Volvo has no legitimate expectation to any minimum price since the second period (i.e. 24 April 2003) and the divestiture of the Scania shares through a distribution by way of special dividend or any other form to Volvo's shareholders is expressly foreseen in the Scania Undertaking offered by Volvo in 2000.

3. Conclusion

For the avoidance of doubt, and in line with our standard remedies policy this letter does not constitute confirmation that Volvo has complied with the Scania Undertaking.

This letter is without prejudice to the application of any national antitrust or merger control provisions to the Ainax structure.

Given the pending annual general meeting of Volvo's shareholders due to take place on 16 April 2004, we would request you to let us have a non-confidential version of this letter by 12.00 noon on Tuesday 13 April 2004 for publication on the web site of DG Competition, otherwise we shall assume that the entirety of this letter may be published.

[7] See Volvo's press release of 3 February 2004.

You are further required to submit to the Commission the full package of proposals as regard the Scania A-shares put to the shareholders at the annual general meeting on 16 April 2004 together with the proceedings of the meeting and a schedule of the votes present and/or cast.

Yours sincerely

Götz DRAUZ
Director
(signed)