

***Case No IV/M.1357 -
NORDIC CAPITAL /
HILDING ANDERS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 04/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.2.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1357 - NORDIC CAPITAL / HILDING ANDERS

Notification of 20.11.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 November 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Apax Intressenter will acquire all shares in Hilding Anders Holding, a Swedish company active in the manufacturing of box spring beds. As set out below, the two companies will become jointly controlled, in the meaning of Article 3(1)b of the Merger Regulation, by their respective previous owners.
2. The notification was declared incomplete on 27 November according to Article 4 of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings². Complete information was obtained on 23 December and the notification thus became effective within the meaning of Article 4(2) of Regulation (EC) No 447/98 on 4 January 1999.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

² OJ L 66, 6.3.1998, p. 25

3. 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 functioning of the EEA Agreement.

I. THE PARTIES

4. Apax Intressenter is a holding company, which owns 100% of the shares in Apax Industri (Apax), a manufacturer of box spring beds and upholstered furniture, with subsidiaries in Sweden, Denmark, Norway and Finland. Apax Intressenter is controlled by Atle AB (Atle), Investment AB Bure (Bure), AllmännaPensionfonden 4:e fondstyrelsen (AP4:e), Handelsbanken Livförsäkringsaktiebolag (controlled by Svenska Handelsbanken - SHB) and Livförsäkringsaktiebolaget Skandia (Skandia)³. Atle and Bure are Swedish investment holdings and asset management companies, AP4:e is a Swedish state-owned pension fund, SHB is a major Swedish bank and Skandia is the largest insurance company in Sweden.
5. Hilding Anders Holding (HAH), is owned by Atle and Bacapps AB. The latter company includes the financial interests of the management of HAH.
6. Atle, Bure, AP4:e, SHB and Skandia (jointly “the Investors”) have previously made a number of investments within the framework of Nordic Capital Svenska AB (Nordic Capital)⁴. Such investments are jointly owned by the Investors. Each of the five Investors has one vote on the Board of Nordic Capital. In addition, the company’s Managing Director has one vote. According to its statutes, decisions by the Board are to be adopted by simple majority. However, at the time when Nordic Capital was formed, the Investors orally agreed that all strategic decisions relating to Nordic Capital (including those concerning its portfolio companies) shall require unanimous approval of all Investors (“the Investor Agreement”). Consequently, Nordic Capital manages the Investors interests in its portfolio companies (including Apax Intressenter) and is jointly controlled by the Investors.

II. THE OPERATION

7. The operation will be carried out in two simultaneous steps. Firstly, Apax Intressenter will acquire all shares in Hilding Anders Holding. Secondly, as consideration for the shares in HAH, Apax Intressenter will issue new shares to Atle and Bacapps. Following the operation, Apax Intressenter will own 100% of both Apax and HAH.

III. CONCENTRATION

Joint control

8. Apax Intressenter will have a Board composed of six members, who will have one vote each. The seats on the Board will be allocated as follows: Atle – [], Nordic Capital – [], Skandia Investment (a subsidiary of Skandia) – [], Bacapps and the previous management

³ See Commission decision No IV/M.1026 Nordic Capital/Apax Industrier of 6 November 1997.

⁴ For other decisions involving Nordic Capital, see case No IV/M.522, *Scandinavian Project*, of 28 November 1994; case No IV/M.625, *Nordic Capital/Transpool*, of 23 August 1995; and case No IV/M.732, *Nordic Capital/Euroc*, of 18 April 1996.

of Apax []. The main strategic decisions of the company (including the approval of the business plan and the appointment of the Managing Director) must be adopted by [] votes.

9. Thus, none of the owners, or any combination of them, have the legal power to impose any decisions within the board of Apax Intressenter. However, the Investors will control, in total, four votes on the Board of Apax Intressenter. It therefore follows from the above-mentioned Investor Agreement, which requires the unanimous approval of all of them for strategic decisions relating to Nordic Capital and its portfolio companies, that the Investors jointly will be able to exercise negative veto powers, and thus control, over the strategic decisions of Apax Intressenter.

Full-function joint venture

10. Both Apax and HAH are long-established manufacturers of box spring beds and related products, with all the assets and resources necessary to perform all the functions of autonomous economic entities. Although the aim of the notified operation is to combine the two companies respective businesses, this will not change the full-function character of the business. It can therefore be concluded that the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵. Each of the Investors has a Community-wide turnover in excess of EUR 250 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

A. Relevant product markets

12. According to the notification, the relevant product market is the overall market for the manufacturing and sale of beds. This is stated to include box spring beds (the primary activity of Apax and HAH), as well as other types of beds, such as reversible beds, polyfoam mattress beds and sofa beds.
13. Beds are heterogeneous products, which consumers purchase, on average, only once every 14 years. According to the investigation, the purchase decision will be influenced by a number of factors, ranging from price, quality and comfort to ergonomic and aesthetic functions. These differences were emphasised by a clear majority of the third parties

⁵ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.23.1998, 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.

contacted by the Commission, who did not share the parties view that competition for the sales of box spring beds are significantly affected by other types of beds.

14. This is further indicated by the figures provided in the notification, which show that box spring beds are significantly more expensive (50-100% or more) than reversible beds and polyfoam mattress beds, and that, on the other hand, box spring beds are significantly less expensive (less than half the price) than sofa beds. Thus, based on the relative prices, it seems unlikely that there would be a significant degree of substitutability between box spring beds and the other types of beds proposed by the parties.
15. Even within the category of box spring beds there would appear to be clearly distinguishable differences between the products offered by certain suppliers. It would thus appear that both Apax and HAH are active in what could be described as the “low to middle-end” of the market, which generally coincides with the volume-part of the market. This is indicated, *inter alia*, by the fact that Apax and HAH sell only 20-40% of their products under their own brand names, with the rest being sold under the private label of independent retailers. On the other hand, certain manufacturers of box spring beds sell their products on the basis of heavy investment in creating strong brand names, and at prices up to 3-5 times higher than those of Apax and HAH. It therefore appears questionable whether there is sufficient substitutability between all box spring beds to justify their inclusion in the same relevant product market.
16. However, given that the proposed operation would not, even on the basis of the most unfavourable market definition plausible (i.e. national markets for “low to middle-end” box spring beds, see below), significantly impede effective competition in the EEA or any substantial part of that area, it is not necessary finally determine the scope of the relevant product market.

B. Relevant geographic markets

17. The notifying parties state that the relevant geographic market is at least Nordic. The parties base this assumption on statistics on cross-border trade in beds, which indicates that imports and exports occur between all Nordic countries, and that, in particular, relatively significant exports are made from Norway to the other Nordic countries.
18. The parties have, however, not been able to supply separate figures on the import and export of the various types of beds. A number of third parties have stated that cross-border trade in box spring beds is insignificant, given that most of these products have a relatively low value/weight ratio. Given the absence of broken-down statistics it therefore cannot be excluded that the existing cross-border trade relates primarily to reversible beds and polyfoam mattress beds (which are less heavy), sofa beds (which have a higher value) and box spring beds in the higher end of the market.
19. Moreover, the parties have provided no explanation for the significant price differences which can be seen in their own sales figures, for example Apax average price for box spring beds is more than 40% higher in Denmark than in Sweden. Even larger price differences can be seen in the sales figures relating to HAH. Such price differences are normally incompatible with a finding of a single relevant geographic market.

20. It is, however, not necessary to determine whether the markets are national or wider because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

Structure of supply

21. The bed manufacturing industry in the Nordic countries is fragmented, and made up by a relatively large number of small, often family-owned companies. Although Apax and HAH are relatively small companies (turnover in 1997 ECU 68 and 26 million respectively), they are clearly the largest players on the market regardless of what market definition is used. On the basis of the market definition proposed by the parties, i.e. box spring beds, reversible beds, polyfoam mattress beds and sofa beds on a Nordic market, Apax and HAH would have combined market shares of [$<30\%$]. The rest of the market would be made up of more than 30 suppliers, of which none would have a market share over 10%.
22. However, as indicated above, it appears that the relevant market could be defined in more narrow terms. If the market were to be assessed on the level of national sales of box spring beds the parties' highest market shares would be found in Sweden, where Apax and HAH achieve sales of similar size. In 1997 their combined Swedish market shares were [$<50\%$] (based on volume) and [$<30\%$] (based on value). Their main competitors were Dux, with [$<10\%$] ([$<30\%$] based on value), Hästens, with [$<10\%$] ([$<20\%$] on value) and Ekornes [$<20\%$] ([$<20\%$] on value). In the other Nordic countries the overlap resulting from the operation is less significant, since the market share of HAH is 5% or less.
23. The large differences existing between market shares based on volume and market shares based on value are consistent with comments received from third parties, indicating that Apax and HAH are not in direct competition with the box spring beds produced by Dux and Hästens. The latter sell their products on the basis of heavy investment in creating strong consumer brand preferences, and normally through distribution channels other than those used by the parties. This is also consistent with the figures submitted in the notification, which indicate that the average prices for Dux and Hästens are up to 3-5 times higher than those of Apax and HAH.
24. If, on the basis of the above, Dux and Hästens were to be excluded from the market, which could then be described as the market for "low to middle-end" box spring beds, Apax and HAH would attain combined market shares of [$<50\%$], whether assessed by value or volume. Calculated on that basis Ekornes would have approximately [20%] and Jensen would have around 10%. These figures are generally in line with the estimations submitted by most third parties.
25. Thus, on the basis of the most unfavourable market definition plausible, the parties would attain a market share of [$<50\%$], which would be three to five times that of its next competitors, Ekornes and Jensen. Although both of these competitors are active in more than one Nordic country, it appears doubtful that they would be able to significantly restrain the competitive behaviour of Apax and HAH, in particular given the superior financial resources that will be available to the latter after its inclusion in the Nordic Capital group.
26. The parties have stated that their manufacturing of box spring beds should be seen as a low-tech business, and that, consequently, new entry from producers with activities on

neighbouring product markets, such as upholstered furniture, is feasible within one year. Whereas it is true that the “low to middle-end” of the box spring beds market is more homogeneous, and therefore more contestable than the part of the market where brand image plays a significant role, the parties have provided no indications that any supplier of upholstered furniture is likely to start producing box spring beds within the near future.

27. However, in response to a possible price increase by Apax and HAH, existing competitors, including Ekornes and Jensen, could, without significant costs, increase their existing capacity. Moreover Dux and Hästens could, also without significant costs, enter the “low to middle-end” of the market, although they would have to weigh the potential benefits of such entry against any possible negative impact on their current positions as “top-end” producers. Although the threat of potential entry in itself may be insufficient to constrain the market behaviour of Apax and HAH, it will strengthen the ability of the parties’ customers to use alternative supply sources (see below).

Structure of demand

28. The demand side of the market is relatively more concentrated than the supply side. The single largest customer of both Apax and HAH is Ikea, which accounts for [<30%] and [<40%] of their respective total sales. The importance for the parties of maintaining their current sales to Ikea and other large customers is clearly set out in the documents submitted with the notification. Ikea, which is active on a world-wide basis, is several times larger than even a combined Apax/HAH. It is also a sophisticated customer, whose relationship to Apax and HAH can be described as subcontracting. As such, all of Apax and HAH’s sales to this customer are made according to specifications set by Ikea and sold under the latter’s own brand names. In addition to Ikea, the parties will also face a number of other relatively large furniture retail customers, such as Jysk and Europa Möbler. Also these customers account for important parts of the parties’ total sales and sell the products in question under their own brand names. These large customers have not expressed any serious concerns about the proposed concentration.
29. The countervailing power of the largest customers will be based on the existence of alternative sources of supply, such as Ekornes and Jensen, but also potentially Dux and Hästens. As these suppliers would, without incurring significant costs, be able to supply at least part of the demand of these customers, they will have a real possibility to use this possibility in future negotiations with Apax and HAH.
30. Furthermore, although there appears to be limited possibilities for cross-border trade in “low to middle-end” box spring beds, Ikea, in particular, is already sourcing various products from non-EU countries, where production costs are lower. Given that it is, by far, the largest retailer of box spring beds, the volume of its purchases (which are produced against its own specifications) makes it ideally placed to import also these products. Therefore, if Ikea were to be faced with significant price increases from Apax and HAH, it could, in addition to the possibilities mentioned in the previous paragraph, credibly threaten to shift part of its requirements to foreign suppliers.
31. For Apax and HAH, who currently sell 60-80% of their products unbranded, it would be difficult to find new sources of demand, should Ikea (or other large customers) switch to alternative suppliers. This countervailing power will therefore act as a significant restraint on the parties’ market behaviour. It is clear from the documents submitted with the notification that the parties, following the concentration, aim to produce more value-added (branded) products. Given that Ikea and other large retailers largely focus on their private labels, the parties’ future strategy will

require that their smaller retail customers remain competitive on the retail market. Apax and HAH will therefore have an incentive not to raise prices above the competitive level for their smaller customers, since that would endanger their strategy of producing more value-added products and, in the long term, could further increase their dependency on the largest retail chains.

Conclusion

32. Following the notified operation, Apax and HAH will clearly become the market leader, and will have a market position which is superior to all of its competitors. The merged entity will, *inter alia*, face potential competition and a number of large and sophisticated customers, who, it must be concluded, will retain significant countervailing power. Therefore, the notified operation will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

VI. CONCLUSION

33. 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 (EEC) No 4064/89.

For the Commission,