

***Case No COMP/M.5157 -
VOLKSWAGEN /
SCANIA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/06/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/06/2008

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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 (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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:

Dear Sir/Madam,

**Subject: Case No COMP/M. 5157 – VOLKSWAGEN/ SCANIA
Notification of 07.05.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 7 May 2008, the Commission received a notification of a proposed concentration by which Volkswagen AG (“VW”, Germany) acquires control of Scania AB (“Scania”, 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 (EC) No 139/2004 (“the EC Merger Regulation”) 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

3. VW develops, manufactures, markets and sells cars and light commercial vehicles including spare parts and accessories. The company also engages in vehicle distribution. The VW Group includes the vehicle brands VW, Audi, Seat, Skoda, Bentley, Lamborghini and Bugatti. Furthermore, the company also has some diesel engine activities.
4. Scania develops, manufactures, markets and sells trucks with a gross vehicle weight of more than 16 tonnes, construction haulage and distribution of goods. The company also manufactures and sells buses and chassis for buses. In addition, Scania manufactures industrial and marine diesel engines. Scania is mainly active in Europe.

¹ OJ L 24, 29.1.2004 p. 1.

5. VW holds 29.9 % of the voting rights in MAN AG ('MAN'). In the MAN/Scania decision², the Commission found that VW did not have de facto control over MAN with a shareholding of 21.6 %. The subsequent increase in voting rights does not alter the assessment. In MAN's Annual General Meeting in 2007, 63.5 % of the voting rights were present, which would not have given VW a majority. It cannot therefore be concluded that VW has achieved de facto control of MAN.

II. THE OPERATION

6. On 7 May 2008, the Commission received a notification of a proposed concentration by which VW acquires sole control of the whole of Scania by way of purchase of shares.
7. Currently, VW holds 37.98% of the voting rights in Scania. [...] VW signed a share purchase agreement. With the proposed transaction, VW will increase its participation in Scania to 68.6 % of the voting rights by way of purchase of shares from the Swedish corporation Investor AB and a number of Swedish foundations, all owned by members of the Wallenberg family.

III. CONCENTRATION

8. VW intends to acquire the majority of the shares of Scania. The notified transaction therefore concerns the acquisition of sole control of Scania by VW.
9. On this basis the Commission concludes that the proposed transaction constitutes a concentration within the meaning of Article 3(1) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (VW: € 108.9 billion; Scania € 8.9 billion). Each of them 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

11. VW's core business is the manufacturing of passenger cars and light commercial vehicles, whereas Scania is mainly active in the manufacturing of trucks. The present transaction will combine the parties' activities in the manufacturing of trucks, buses, chassis for buses, original spare parts and the distribution of these vehicles and parts. Both the parties are also active in the manufacturing and distribution of certain diesel engines. To a limited extent, the proposed transaction concerns the markets for financial

² Case COMP/M.4336 – *MAN/Scania*, Commission decision of 20.12.2006

services, insurance and short-term truck rent but as a considerable number of other non-automotive players offer the same services competition concerns with respect to these financial services can be excluded a limine.

A. RELEVANT PRODUCT MARKET

1. Trucks

12. The parties submit that the truck market should be divided into three market segments according to the truck's gross vehicle weight: the light-duty segment (below 5 tonnes), the medium-duty segment (5-16 tonnes), and the heavy-duty segment (above 16 tonnes). This segmentation is in line with previous Commission decisions³.
13. The Commission has in previous decisions considered whether each of the weight segments needs to be sub-divided further, for instance according to rigid trucks versus tractor trucks or military trucks. In the present case, any such further distinction can be left open, as any such sub-segmentations would not affect the competitive assessment.
14. According to the parties, a separate market for military trucks should be defined, due to the significant investment in terms of organisation, human resources and finance on the supply side as well as the specified requirements for military trucks (such as the need for local production and service and for well-established contacts with the national public procurement offices) on the demand side. This market could be further divided into markets for military on-road trucks and military off-road trucks. However, for the purpose of the present case, the question whether one or more separate product markets for military heavy trucks should be defined can be left open, as the merger does not raise any competition concerns even assuming the narrowest definition.

2. Buses, coaches and chassis for buses

15. In previous decisions⁴, the Commission identified three different market segments for buses: city buses, inter-city buses and touring buses. Despite possible partial overlaps between the three market segments, the Commission consistently regarded them as separate product markets.
16. In a recent decision in the MAN/Scania-case⁵, the Commission concluded that there is a distinct market for chassis for buses and coaches which is upstream from the markets for buses and coaches. The Commission considered whether a further sub-division of the market along the lines of certain technical characteristics of various types of chassis would be justified, but ultimately left this open. For the purpose of the present case, the question whether one or more separate product markets for chassis for buses should be

³ Case COMP/M.4336 – *MAN/Scania*, Commission decision of 20.12.2006, Case COMP/M.1671 – *Volvo/Scania*, Commission decision of 03.05.2000, Case COMP/M.1984 – *Volvo/Renault V.I.*, Commission decision of 01.09.2000.

⁴ Cases COMP/M4336 *MAN/Scania*, Commission decision of 20.12.2006, COMP/M.2201 – *MAN/Auwärter*, Commission decision of 20.06.2001, COMP/M.1980 – *Volvo/Renault V.I.*, Commission decision of 01.09.2000, IV/M.1672 – *Volvo/Scania*, Commission decision of 03.05.2000, IV/M477 – *Mercedes-Benz/Kässbohrer*, Commission decision of 14.02.1995.

⁵ Case COMP/M.4336 – *MAN/Scania*, Commission decision of 20.12.2006.

defined can also be left open, as the merger does not raise any competition concerns even assuming the narrowest definition.

3. Diesel engines

17. Both VW and Scania manufacture and sell diesel engines for different applications and in different power ranges.
18. In previous decisions⁶, the products were segmented according to the end use of different engines: industrial (construction, agricultural, material handling, earth-moving equipment), on-highway trucks (light, medium and heavy duty trucks and other commercial vehicles), so-called "GenSets" (stand alone electricity generators powered by diesel engines) and marine applications (ships).
19. The parties submit that industrial diesel engines are distinguished according to their power from a demand side perspective. According to the parties, the applicable emission standards form the most important distinguishing factor: 18/19-37 kW (24-50 hp), 37-75 kW (50-100 hp), 75-130 kW (100-177 hp) and 130-560 kW (177-762 hp). The market investigation indicated that segmentation according to power range is appropriate. In the industrial engine sector, the diesel engines manufactured and distributed by the parties fall into entirely different horse power categories.
20. The parties submit that from a demand side perspective, the sub-division into power ranges does not adequately take into account the limitations for the use of engines resulting e.g. from their volume and displacement (dm³) in the marine application field. Even if two marine engines fall into the same hp (kW) category, this does not necessarily mean that they can be used for the same application. Even with more or less the same power, a diesel engine for a commercially used boat regularly has a different volume and displacement than a diesel engine in a leisure boat. Accordingly, in the parties' view, the categories of respective power as mentioned above need to be further sub-divided in accordance with the typical field of use for the particular engine determined by the volume and displacement of the respective engine at least in the market for marine engines.
21. In the marine sector, the diesel engines manufactured and distributed by the two parties serve different purposes of use (leisure versus professional).
22. The results of the market investigation indicate that a separation between leisure/commercial uses could be relevant, as a number of customers are only active in either the commercial or the leisure segment and as for instance the number of hours per year is typically lower with engines for the leisure segment.
23. However, for the purpose of the present case, the question whether separate product markets for diesel engines according to power range or end use should be defined can be left open, as the merger does not raise any competition concerns even assuming the narrowest definition.

B. Relevant geographic markets

⁶ Cases COMP/ M.1094 – *Caterpillar/Perkins Engines*, Commission decision of 23.02.1998, COMP/M.4336 – *MAN/Scania*, Commission decision of 20.12.2006.

24. In the MAN/Scania-decision, the Commission left the geographic scope of the market for trucks (national or EEA-wide markets) open. Similarly, the geographic scope of the market can be left open as far as the question of national or EEA-wide markets is concerned in the present case, as the merger would not raise competitive concerns even assuming the narrowest definition. However, it can be excluded that the markets are world-wide, because technical specifications between the EEA and other world regions differ substantially.
25. Regarding buses, coaches and chassis for buses, the geographic scope of the market (national or EEA-wide markets) was also left open in the MAN/Scania-decision. In the present case, the geographic scope of the market can also be left open, as the merger would not raise competitive concerns even assuming the narrowest definition. A world-wide market can be excluded for the same reason as it is excluded for trucks.
26. With respect to diesel engines the Commission has in previous decisions concluded that the geographic scope is at least EEA-wide. The market investigation in the present case has confirmed that the competitive conditions for diesel engines are similar throughout the EEA.

C. Assessment

1. Trucks

27. Scania is only active in the segment of trucks over 16 tonnes, i.e. heavy trucks. VW also manufactures heavy trucks with a gross vehicle weight of more than 16 tonnes, but only in Middle and South America. According to the parties, technical specificities of VW's heavy trucks produced for the Middle and South American region would prevent VW from exporting those vehicles to the EEA. Accordingly, there is no horizontal overlap in the EEA markets for heavy trucks, cf. table 1.
28. Neither VW nor Scania manufacture or sell any medium trucks, i.e. trucks with a gross weight between 5 and 16 tonnes. Some VW Crafters are modified so as to require a registration as a medium truck and some Scania heavy duty trucks may be modified by independent dealers without any involvement of Scania so as to allow registration as a medium truck. However, according to the registration statistic, this applies to less than 400 trucks (less than 1% of all Scania trucks) each year in the EEA.

Table 1: Market shares, trucks

EEA	Light commercial vehicles	Heavy trucks
VW	[5-15]%	0%
Scania	0%	[10-20] %

29. Since there is no actual horizontal overlap between the parties' activities in the truck market, the Commission considers that the proposed transaction does not raise competition concerns on this market and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

2. Buses, coaches and chassis for buses

30. Scania is active in all three market segments for buses: city buses, inter-buses and touring coaches. VW only manufactures buses in Middle and South America for this region and Africa and is therefore not active in any of the market segments for buses in the EEA. The same conditions apply to the market for bus chassis. Accordingly, there is no horizontal overlap in the EEA markets for buses and bus chassis, cf. table 2.

Table 2: Market shares, buses

EEA	Urban buses	Inter-city buses	Coaches
VW	[0-10]%	[0-10]%	[0-10]%
Scania	[0-10]%	[0-10]%	[0-10]%

31. For the above reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for buses and bus chassis and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

3. Diesel engines

32. VW and Scania are both active in the manufacture and sales of industrial diesel engines and diesel engines for marine applications. Only Scania is active in the segment for GenSets and the merger does therefore not lead to any horizontal overlaps in this market segment.
33. During the market investigation, some concerns were raised regarding the market for diesel engines. However, further investigations revealed that the concerns raised were not specifically related to the proposed merger, but were more to be viewed as general remarks to the creation of a large entity.
34. In the segment for industrial diesel engines, the combined market share of VW and Scania is [0-10]% in the EEA, cf. table 3. Even in case of a more narrow segmentation of the market according to power ranges, the combined market share remains below 25%, as VW is mainly active in the lower power ranges while Scania is mainly active in the higher power ranges.

Table 3: Market shares, diesel engines

EEA	Market share VW	Market share Scania	Combined market share
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Industrial (total)	[0-10]%	[0-10]%	[0-10]%
- 19 to 37 kW	[0-10]%	[0-10]%	[0-10]%
- 37 to 75 kW	[10-20]%	[0-10]%	[10-20]%
- 75 to 130 kW	[0-10]%	[0-10]%	[0-10]%
- 130 to 560 kW	[0-10]%	[0-10]%	[0-10]%
GenSets (total)	[0-10]%	[0-10]%	[0-10]%
Marine (total)	[0-10]%	[0-10]%	[0-10]%
- 18 to 37 kW	[0-10]%	[0-10]%	[0-10]%
- 37 to 75 kW	[0-10]%	[0-10]%	[0-10]%
- 75 to 130 kW	[0-10]%	[0-10]%	[0-10]%
- 130 to 560 kW	[0-10]%	[0-10]%	[0-10]%

35. In the segment of diesel engines for marine applications, the combined market share of VW and Scania is [0-10]% in the EEA, cf. table 3. Even in case of a more narrow segmentation of the market according to power ranges, the combined market share remains below 25%.

36. For the above reasons, the Commission considers that the proposed transaction does not lead to competition concerns on the market for diesel engines and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

4. Other aspects

37. VW holds 29.9 % of the voting rights in MAN AG ('MAN'), a company which is also active in the production of trucks. The market investigation did not reveal any additional aspect which would change the assessment set out above. But even if the non-controlling minority shareholding was to be considered to be able to influence the incentive of the parties to compete, the transaction would not raise serious doubts as to its compatibility with the Common Market. In assessing the planned acquisition of Scania by MAN⁷, the Commission found that the combination of MAN and Scania was unlikely to create significant competition problems in any of the affected markets (trucks, buses, chassis for buses and diesel engines) and therefore did not give rise to serious doubts as to its compatibility with the common market and the EEA Agreement. In the present case, the parties upon request have submitted updated information on the relevant markets. The submitted information shows that the conclusions in the MAN/Scania decision are still valid. Therefore it can be concluded that even if the VW's minority shareholding is taken into account – which as a result of the market

⁷ Case COMP/M.4336 – *MAN/Scania*, Commission decision of 20.12.2006.

investigation is not necessary as no concerns were raised in this respect – the competitive assessment would not change.

VI. CONCLUSION

38. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission