

EN

*Case No IV/M.065 -
ASKO / OMNI*

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

Article 6(1)(b) NON-OPPOSITION
Date: 21.02.1991

*Also available in the CELEX database
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MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

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1. Notifying party

Dear Sir,

Subject: Case No. IV/M065 - ASKO/Omni

I. THE NOTIFIED OPERATION

1. The notified operation will involve the acquisition by Omni Holding AG ("Omni") of 48% of Comco Holding AG ("Comco") from ASKO Deutsche Kaufhaus Aktiengesellschaft ("ASKO") which will itself retain 48% of Comco. Furthermore, Comco will acquire control of ADIA S.A. ("ADIA") by way of the acquisition, from Omni, of 53% of the voting shares in ADIA.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

II. CONCENTRATION

3. Following completion of the transaction, ASKO and Omni will each hold a 48% participation in Comco, 4% being held by the managing director of Comco. The new shareholders of Comco will enter into a shareholders' agreement which provides that any changes to the statutes are to be approved by a two-thirds majority of the voting shares, that Omni and ASKO are each entitled to 50% of the board seats, that the chairman of the supervisory board shall have no casting vote and that a simple majority is required for all decisions of the supervisory board. Hence Comco will be jointly controlled by Omni and ASKO.

4. Furthermore, there do not exist any market sectors in which Omni, ASKO, Comco or ADIA compete with one another; indeed, Omni, ASKO and Comco have entered into a non-competition agreement whereby they will not compete in defined business sectors.

5. In view of these facts, and since Comco will perform on a lasting basis all the functions of an autonomous economic entity, the proposed operation is to be considered as a concentrative joint venture within the meaning of Article 3(2 - second paragraph) of the Merger Regulation.

6. The non-competition agreement referred to in paragraph 3 constitutes an ancillary restriction which expresses the intention of Omni and ASKO to abstain from activity in Comco's business sectors; as such it constitutes an integral part of the proposed overall agreement, and one which poses no problems from the competition point of view.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of all the undertakings concerned was about 8200 million Ecu in 1989. ASKO and ADIA each achieved an aggregate Community-wide turnover of more than 250 million Ecu in 1989, of which not more than two-thirds was achieved in one and the same Member State. Thus the concentration has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

8. Omni, which is itself controlled by the Werner K. Rey Trust, is a Swiss holding company with interests in a wide range of sectors within the EC. Omni, by virtue of its power to designate a majority of the board, controls ADIA, a Swiss company active mainly in personnel services.

9. ASKO is a German holding company with substantial retailing interests, mainly in Germany. ASKO, by virtue of a majority shareholding, controls Comco, a Swiss holding company with interests in a variety of service sectors within the EC.

10. A sectorial breakdown of the activities of the four undertakings concerned indicates that the proposed transaction involves no horizontal or vertical relationships. Close analysis of any apparent overlap reveals that the activities involved are in fact not in the same sectors (for example, Omni's transportation activities through its 'Harpener' subsidiary relate to river transport, those of Comco to transport by truck).

11. From a conglomerate point of view, none of the undertakings concerned has, in any of the product markets in which they are active, a market share of more than 25%, which is the threshold at which they are required to supply detailed market information according to form CO.

12. On the basis of the market information which is supplied the following observations may be made:

- the only product market shares which exceed even 10% in EEC Member States are held by ADIA individually, in the personnel services sector;

- as far as the joint venture Comco itself is concerned, there exist much larger competitors in each of its three major sectors (insurance broking, environmental services and transportation).

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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. This decision is adopted in application of Article 6, paragraph 1(b), of Council Regulation No. 4064/89.

For the Commission