

***Case No IV/M.998 -  
OBS! DANMARK***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 10/11/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.11.1997

**MERGER PROCEDURE**  
**ARTICLE 6(1)(b) DECISION**  
**PUBLIC VERSION**

For the notifying parties

Dear Sirs,

Subject : **Case No. IV/M.998 - OBS! Danmark**

Notification of 7 October 1997 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 7 October, 1997 “Fællesforeningen for Danske Brugsforeninger” (FDB) of Denmark, “Norges Kooperative Landsforening” (NKL) of Norway and “Kooperative Förbundet” (KF) of Sweden notified to the Commission an acquisition of joint control over a new joint venture “OBS! Danmark A/S” (OBS! Danmark) comprising the OBS! chain of hypermarkets in Denmark.
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 or with the functioning of the EEA Agreement.

## **I THE PARTIES**

3. FDB is active in wholesaling and retailing of daily consumer and specialty goods on the Danish market. FDB is a cooperative society owned by its members, comprising 525 independent cooperative societies and 785,277 individual members. FDB operates fully owned retail outlets and purchases and distributes to these outlets as well as to the stores owned by the independent cooperative societies. FDB currently operates the Danish OBS! chain of hypermarkets which consists of 11 stores.
4. NKL is active in wholesaling of daily consumer and specialty goods in Norway. As FDB, NKL is a cooperative society owned by more than 800,000 individual members. NKL operates as a the purchasing and distribution organisation serving 1256 outlets of daily consumer and specialty goods.

5. KF is active in wholesaling and retailing of daily consumer and specialty goods on the Swedish market. As FDB and NKL, KF is a cooperative society owned by independent cooperative societies. KF purchases and distributes for the independent societies. Furthermore, KF owns and operates 782 stores and hypermarkets.

## II THE OPERATION

6. FDB will put the eleven Danish OBS! hypermarkets into the new joint venture. FDB, NKL and KF will each hold one third of OBS! Danmark. The operation only concerns the Danish market.

## III CONCENTRATION

7. The acquisition by FDB, NKL and KF of one third each of OBS! Danmark constitutes a concentration within the meaning of Article 3(2) of the Merger Regulation.

### Joint control

8. FDB, NKL and KF will each appoint two members of the Board. The Board decides by simple majority, but unanimity is required for the following decisions:

[.....]<sup>1</sup>

9. The question whether such requirements for unanimity give rise to joint control depend on the specific circumstances of the business. In this respect it should be noted that the DKK [.....]<sup>1</sup> threshold is very small seen in relation to DKK 3 billion turnover of OBS! Furthermore, OBS! is in need of refurbishing its stores and is about to embark on a large investment programme, which will involve significant investments of a magnitude much larger than DKK [.....] per store. Consequently, in this case the veto rights on [.....]<sup>1</sup> with a value of more than DKK [.....] effectively give each of the parties veto rights over [.....] of the company, since such decisions could not be implemented without unanimous agreement on these [...]. Moreover, the requirement that [.....]<sup>1</sup> unanimously will give each of the parties decisive influence on how the joint venture will be managed. Therefore, the requirement of unanimity on the above issues will give each of the parties joint control over OBS! Danmark.

### Full function joint venture operating on a lasting basis

10. OBS! Danmark will operate 11 hypermarkets. It will employ more than 2000 people and it will have a head office with central functions such as purchasing, and marketing. Furthermore, it is not limited in time. Therefore, the joint venture is a full function joint venture operating on a lasting basis.

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<sup>1</sup> Deleted. Business secret.

No possibility of coordination of the competitive behaviour of FDB, KF and NKL

11. FDB operates on the Danish market, NKL on the Norwegian and KF on the Swedish market for daily consumer goods. However, OBS! Danmark will only be active in the Danish market. Only one of the parents will, therefore, be on the same market as the joint venture. Consequently, there is no risk of coordination of the competitive behaviour of the parent companies.

#### **IV. COMMUNITY DIMENSION**

12. The combined aggregate world-wide turnover of the undertakings concerned exceeds ECU 5 billion. The aggregate Community wide turnover of FDB, KF and OBS! each exceed ECU 250 millions. The parties do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has, therefore, a Community dimension.

#### **V. THE RELEVANT MARKETS**

##### **A. Relevant Product Markets**

13. In previous cases involving retailing of daily consumer goods, such as IV/M.784 - Kesko/Tuko, it was concluded the relevant market consists of the provision of a basket of fresh and dry food-stuffs, and non-food household consumables sold in a supermarket environment whereas the market does not include sales at specialised stores, kiosks and petrol stations. It is possible that the same is the case for the Danish market. However, in the present case the market definition can be left open, since the operation does not affect the market structure.

##### **B. Relevant Geographic Market**

14. In Denmark daily consumer goods are sold by national chains operating on a national or in some cases regional basis. Therefore, the relevant geographic market is at most a national market.
15. In retailing the catchment area for a supermarket is often delimited by a boundary within which the supermarket can be reached by car in no more than about twenty minutes (see case IV/M.784 - Kesko/Tuko). From the consumers' viewpoint, a twenty minute car journey might offer a choice of one, two, or more supermarkets and smaller outlets which also offer a "basket of goods", depending on his and their location. However, there is normally a certain overlap between supermarket catchment areas, which will not only determine the competitive interactions between geographically proximate supermarkets, but will also, to some extent, have a "knock-on" or "chain-reaction" effects on more distant supermarkets. Moreover many important parameters of competition, such as range of products, sources of such products, quality, service level (opening hours etc), advertising, promotion and prices (e.g. on campaign products) are not decided on the local level, but on a regional or national level. Such decisions are generally implemented at a number of retail outlets within a certain region. In case IV/M.784 - Kesko/Tuko it was concluded that it was appropriate to aggregate to the national level. However, in the present case it is not necessary to

decide whether the relevant geographic market is a local, regional or national market, since the operation has no effect on the market structure.

## **VI. ASSESSMENT**

16. The operation involves a financial transaction, whereby KF and NKL takes an interest in the Danish OBS! chain of hypermarkets. However, it does not involve horizontal overlaps and it will not affect the market structure nor will it create or strengthen a dominant position.

## **VII. ANCILLARY RESTRAINTS**

17. FDB will be subject to a non-compete clause, which will prevent FDB from establishing hypermarkets in Denmark for a five year period from the consummation of the operation. FDB could easily obstruct the joint ventures possibilities to establish itself in the market. Consequently, the non-compete clause for a limited period of five years is directly related and necessary for the implementation of the concentration, and it is therefore ancillary to the operation

## **VII CONCLUSION**

18. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,