



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.2.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Dear Sirs,

**Subject: Case No IV/M.1056 - Stinnes/BTL**

Notification of 22.12.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 22.12.1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which Stinnes AG ("Stinnes") of Germany acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the Swedish transport company BTL AB ("BTL")

**I THE PARTIES**

2. Stinnes is a wholly owned subsidiary of VEBA AG ("VEBA"). Stinnes controls numerous subsidiaries. The activities of the group include distribution of raw materials, chemicals, steel, car service full-line wholesaling and freight forwarding by road, air, sea, harbour services, inland water transport, shipping as well as logistics storage and warehousing. The freight forwarding activities of Stinnes by road and air are held in the subsidiaries Schenker Eurocargo and Schenker International respectively.
3. VEBA is a German conglomerate with activities in among others electricity generation, chemicals, oil, general trading, building materials, telecommunications and transport services.
4. BTL is a Swedish transport and logistics company. The group has three main divisions: the Land Transport Division active in road transport and logistics, the Wilson Group division active in services related to air and sea transport, and the

Specialist Division active in certain niche businesses such as distribution of garment, transport of cars, removals, and transport of refrigerated and frozen foodstuff.

## **II THE OPERATION**

5. The operation is part of an asset swap with the Finnish company Finnlines Ltd. (“Finnlines”), whereby Stinnes acquires [ <sup>1</sup> ] in BTL from Finnlines in exchange for Poseidon AG (“Poseidon”) a current Stinnes subsidiary active in shipping in the Baltic sea.
6. The asset swap gives rise to two operations: first the acquisition of [ <sup>2</sup> ] in BTL by Stinnes, and second the acquisition of Poseidon by Finnlines. Only the acquisition of shares in BTL by Stinnes has a community dimension. The acquisition of Poseidon by Finnlines does not fall under the Merger Regulation, and is not covered by the present decision.

## **III THE CONCENTRATION**

7. Based on the number of shareholders represented at the shareholders meetings the last three years [ <sup>3</sup> ] would have represented a clear majority of the votes present at the shareholders meetings. Therefore, Stinnes will, through the present operation, acquire de facto control sole control over BTL. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than 5000 million ECU. Each of the undertakings have a Community-wide turnover in excess of 250 million ECU and 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 according to Article 1(2) of the Merger Regulation.

## **V COMPATIBILITY WITH THE COMMON MARKET**

### **A. Relevant product markets**

9. Overlaps between the activities of the parties occur in land transport and in brokering of air freight services. As far as land transport is concerned a distinction has to be made between domestic and internal transport. BTL is active in domestic land transport in Sweden, Norway and Finland, whereas Stinnes is active in domestic land transport in Germany and Austria. Therefore, market share additions only occur in international land transport and brokering of air freight services.

#### Brokering of air freight services

10. Neither BTL or Stinnes operate air planes for air freight purposes. They merely act as brokers between the airlines and customers. Both BTL and Stinnes are relatively

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<sup>1</sup> Deleted business secret

<sup>2</sup> Deleted business secret

<sup>3</sup> Deleted business secret

small players in this market with low combined market shares in any market definition considered. The relevant product market definition can thus be left open since, even on the narrowest possible market definition, the concentration does 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.

#### International land transport

11. International land transport covers the provision of services and distribution of goods by road and rail over borders. It is being carried out mainly by road and only to a limited extent by rail. Bulk goods and liquids are normally not considered part of this business. Furthermore, road and rail may not always be perfect substitutes. However, the relevant product market definition can be left open, since even on the narrowest possible market definition, the concentration does 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.

### **B. Relevant geographic markets**

#### Brokering of air freight services

12. According to the parties the market for brokering of air freight services is international and possibly global. The relevant geographic market may be larger than the Community. However, whether the relevant geographic market is considered to be national, the EU or wider than the EU need not to be decided in the present case since, even on the narrowest possible market definition, the concentration does 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.

#### International land transport

13. Normally, the relevant geographic market would be defined by considering routes or bundles of routes that are substitutable, for example between different geographic areas such as Sweden and Germany, Finland and Germany, or even narrower areas such as, for example, Benelux ports and Southern Sweden. However, the relevant geographic market definition can be left open since, even on the narrowest possible market definition, the concentration does 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.

## C. Competitive assessment

### Brokering of air freight services

14. Both Stinnes and BTL are only minor brokers of air freight services. Therefore, the operation does not give rise to the creation or strengthening of a dominant position in this market.

### International land transport

15. The main competition impact of the operation will be a limited horizontal effects in international land transport of goods between the Nordic countries and Central Europe. Stinnes and BTL are amongst the main suppliers in the traffic between Central Europe and the Nordic countries. However, even after the operation the industry will still be relatively fragmented. The combined market share of Stinnes and BTL will thus be less than [ <sup>4</sup> ] of the volume transported between any of the countries served by both companies. In this respect it should also be noted that resourceful competitors such as DFDS, ASG, Nedlloyd, Kühne & Nagel as well as other players will continue to exist. Therefore, the operation does not lead to the creation or strengthening of a dominant position.

## VI ANCILLARY RESTRAINTS

16. Stinnes and Finnlines have entered into a “cooperation agreement”. In the cooperation agreement it is stated in the preamble that the parties have agreed to cooperation in the field of transportation. However, the agreement does not further set out in which way or in which areas the parties shall cooperate. Furthermore, the cooperation agreement contains a number of specific restrictions of competition:
  - 1) Finnlines or its subsidiaries shall not compete against Stinnes in freight traffic on land or in the air, save for normal intermodal transportation related to sea transportation.
  - 2) Stinnes or its subsidiaries (incl. BTL) shall not compete against Finnlines or its subsidiaries in freight traffic by sea.
  - 3) Finnlines shall have the right of first refusal to carry cargo controlled by Stinnes on the conditions that the area of carriage is sea transportation on the Baltic and the North Sea, the freight rates and services offered by Finnlines are competitive, and the arrangement has no negative impact on Stinnes.

The cooperation agreement shall remain in force [ <sup>5</sup> ]. The parties have argued that the agreement is directly related and necessary for the implementation of the concentration.

17. However, only the part of the cooperation agreement concerning the non-competition clause by which Finnlines are prevented from competing against freight traffic on land and in the air is directly related to the acquisition of BTL by Stinnes (point 1 above). Consequently, the restriction on Stinnes not to compete in freight

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<sup>4</sup> Deleted business secret

<sup>5</sup> Deleted business secret

traffic by sea as well as Finnlines' right of first refusal to carry cargo controlled by Stinnes are not covered by the present decision. Finally, the general agreement between the parties to cooperate in the field of transportation is not covered by the present decision either.

18. As to the length of the non-compete clause (paragraph 16, point 1, above) the parties have argued that Stinnes and Finnlines have for a long period of time cooperated in sea freight. This has given each of the parties detailed knowledge of the other party's business. Furthermore, Finnlines has an intimate knowledge of BTL business system. Finnlines has thus acquired a detailed knowledge about the customer base of BTL, and in particular of the specific needs of individual BTL customers. Consequently, the non-compete restriction on Finnlines is justified in order to guarantee the transfer of the full value of the assets. Moreover, the operation involves not only the transfer of goodwill, but also know-how related to the operation of the BTL system. The Commission, therefore, accepts a duration of [<sup>6</sup>] in this case.

## **VII CONCLUSION**

19. 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

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<sup>6</sup> Deleted business secret