

***Case No COMP/M.1471 -
STATOIL / ICA***

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.07.1999
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1471 – STATOIL/ICA/JV

Notification of 11 June 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 11 June 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which ICA AS, the Norwegian subsidiary of the Swedish ICA AB (“ICA”), a company active in the wholesale and retail of daily consumer goods in Sweden and Norway, intends to acquire joint control of the Statoil Detaljhandel Skandinavia AS (“JV”), which encompasses the retail of fuel and daily consumer goods of the Norwegian state-owned oil company den norske stats oljeselskap a.s. (“Statoil”) in Norway, Sweden and Denmark.
2. After an 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 EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Statoil is a Norwegian state-owned company involved in exploration, production, transportation, refining and marketing of petroleum and derivative products. It also operates a service station network in Sweden, Denmark, Ireland, Norway, Poland, the Baltic States and Russia. The service station operations in Sweden, Norway and Denmark will be concentrated into the joint venture.

4. ICA is a limited company incorporated in Sweden. ICA is the parent company¹ of ICA group of companies including a voluntary chain of ICA retailers active in the retail of daily consumer goods in Sweden and Norway². ICA is also involved in the wholesale of daily consumer goods to ICA retailers and to third party retailers. In Sweden, ICA is to a limited extent active in the procurement of forecourt fuel for sale to a small number of ICA retailers and in the sale of daily consumer goods to restaurants and catering businesses. For the purpose of the acquisition ICA has established ICA AS, a Norwegian private limited company which is wholly-owned by ICA, through which it will carry out the acquisition and jointly control the joint venture with Statoil.
5. The notified operation concerns the acquisition by ICA of joint control over Statoil Detaljhandel Skandinavia AS (“JV”), a Norwegian private limited company, and its affiliates Detaljhandel Norge, AS (a Norwegian company), Detaljhandel Sverige AB (a Swedish company) and Detailhandel Danmark A/S (a Danish company).
6. The transaction will be effected by way of an acquisition by ICA AS of 200,000 shares and subscription of 1,100,000 shares in Statoil Detaljhandel Skandinavia AS constituting in total a 50% ownership interest in the share capital of the joint venture. The joint venture will be active in the marketing and retail of fuel, fuel-related products and services, car-related products and services as well as marketing and retail of daily consumer goods in Sweden, Norway and Denmark.

II. CONCENTRATION

Joint control

7. Following the implementation of the notified transaction, Statoil and ICA will each hold a 50% ownership interest in the joint venture.
8. ICA and Statoil intend to exercise influence in the *Shareholders’ meeting* of the joint venture and through their representation in the *Board of Directors*. The Board of Directors consists of six Directors, three to be appointed by Statoil and three by ICA. The right to appoint the chairman will rotate between the parties every second year, Statoil being entitled to appoint the first chairman. At least one Director nominated by each of the parties must be present for the Board to have the necessary quorum. All decisions, including those concerning the annual budget and the Business Plan, taken by the Shareholders or the Board of Directors are passed by unanimous vote. In the

¹ ICA is the parent company of ICA Group of companies. ICA is owned by the individual ICA retailers partly directly (33% of the share capital and 24% voting rights) and partly indirectly through ICA Förbundet, a non-profit association (38% of the share capital and 55% of the voting rights). In the Board, ICA retailers hold 14 out of 24 seats.

ICA Statutes regulate the relationship between ICA and ICA retailers. ICA retailers must hold shares in ICA and adhere to the policy and quality requirements entailed by the membership. ICA supports the ICA retailers in marketing (magazine, TV-advertising, customer card, own private label range, customer contact centre), financing (renovation financing), staff training (employees and managers). ICA also provides the ICA retailers an access to the economies of scale through bundling of the purchasing power of the ICA retailers. The parties submit that though no purchase obligation exists between the ICA retailers and ICA, the retailers obtain approximately 70% of their purchase through ICA.

It is therefore appropriate to include ICA retailers in the assessment under Article 2 of the Merger-Regulation (see also Kesko/Tuko – Case IV/M.784 (OJ L110, 26.4.1997, p.53).

² In March 1999, ICA AB acquired the Norwegian company Hakon Gruppen AS (“Hakon”), which is active in the wholesale and retail of daily consumer goods to consumers and institutional establishments in Norway and to a minor extent in Latvia.

event that the Board of Directors is not able to resolve an issue, the Shareholders' Agreement includes provisions on a conciliation procedure under which the parties must come to an agreement.

9. The Shareholders' Agreement between Statoil and ICA AS thus provides that the agreement of both notifying parties is necessary for the approval of all strategic decisions concerning the joint venture. Therefore, it can be concluded that the joint venture will be jointly controlled by Statoil and ICA.

Full functionality

10. The joint venture will operate on a lasting basis a network of service stations in Norway, Sweden and Denmark. The network includes 277 service stations currently owned and operated by Statoil and 1,213 independently operated service stations under the Statoil trademark. The Statoil trademark will be licensed to the joint venture and the joint venture will act as a master licensor of the Statoil's logo to the 1,213 independently operated service stations. ICA will license its trademark "ICA Express" to the joint venture. In long term, the parties expect some 500 service stations to be operating under the Statoil and ICA Express logos.
11. The activities of the joint venture will include the purchase, marketing and sale of forecourt fuel, fuel-related products and daily consumer goods and related activities. According to the notifying parties the joint venture will autonomously source its product and services and set its own prices for the retail of products and services offered in those service stations that are owned and operated by it. The joint venture will have contractual arrangements with Statoil and ICA concerning supplies, intellectual property rights and customer service. Statoil will have a fuel supply agreement including gasoline, diesel, kerosene and LPG products with the joint venture for a period of three years and lubricants supply agreement with the joint venture, which is in force until 30 June 2001. These agreements do not call into question the full function nature of the joint venture but are considered necessary to secure the parties' initial investment.
12. The transfer of the service station business from Statoil to the joint venture will include the transfer to the joint venture of approximately 1,700 employees. The joint venture will have a share capital of approximately NOK 2.6 billion and pursuant to the Shareholders' Agreement additional funding up to 50% can be provided by Statoil and ICA.
13. On the basis of the foregoing, it can be concluded that the joint venture will operate on a lasting basis and will perform all the functions of an autonomous economic entity.
14. Thus, the notified operation involving a setting up of the above-mentioned joint venture would constitute a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

III. COMMUNITY DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Statoil EUR 12,591 million in 1998 and ICA EUR 4,487 million³ in 1998)⁴. Each of Statoil and ICA have a Community-wide turnover in excess of EUR 250 million (Statoil EUR 6,121 million in 1998 and ICA EUR 4,487 million⁵ in 1998), 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. It constitutes a co-operation case under the EEA Agreement, pursuant to Article 24 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

16. The economic sectors involved in the concentration are the retail, wholesale and procurement of forecourt fuel and the retail, wholesale and procurement of daily consumer goods.

Retail and wholesale markets for forecourt fuel

17. For the purpose of the notified operation, the parties define fuel as petrol and diesel (and diesel substitutes) distributed/ sold to/from a service station environment. In line with a previous Commission decision⁶, the retail market for forecourt fuel comprises fuel supplied directly to the end-users through service stations.
18. The wholesale market for forecourt fuel comprises the fuel supplied from final depots owned by oil companies to individual service stations. The wholesale activity carried out by Statoil includes delivery to the service stations operated under its name.

Retail, wholesale and procurement markets for daily consumer goods

19. As regards the daily consumer goods, the notifying parties define daily consumer goods as food and non-food products including food, drink, tobacco, newspapers and non-food consumables (i.e. cleaning products, toiletries, disposable paper products, health care products). As held in a previous Commission decision⁷, these products form part of a “basket of daily consumer goods” that consumers expect to find in a supermarket environment.

³ The turnover of Hakon is included in the above figures for ICA AB for the year 1998. The turnover figure for ICA AB does not include the turnover of the ICA retailers. Including retailers, the figure is higher.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, 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.

⁵ See Footnote 3 above.

⁶ See Footnote 10.

⁷ See Footnote 1.

20. In accordance with previous Commission decisions concerning daily consumer goods trade⁸, a distinction must in principle be drawn, from the point of view of possible effects on competition, between two separate markets in the food retail sector, namely the distribution market, in which food retailers act as suppliers vis-à-vis final consumers and the procurement market, in which retailers act as buyers vis-à-vis producers. The market definition can be left open as the proposed merger does not raise concerns on any of the possible markets considered.
21. In addition to the assessment of the notified operation on the retail and procurement levels, an assessment will be necessary at wholesale level, as ICA is also active on wholesale market for daily consumer goods to third party retailers, i.e., outlets not run by ICA retailers, through ICA Servicehandel AB.⁹

B. Relevant geographic markets

22. Despite some local or regional characteristics of the wholesale and retail markets for forecourt fuel, from the point of view of the transport costs, the number of outlets, limit of size of the area served from an individual depot and customer preference, the parties submit that the relevant geographic market for both the wholesale and retail market for forecourt fuel is national in scope. This view is in line with previous Commission decisions.¹⁰ In any event there is a very small overlap between Statoil and ICA, and ICA's presence is not regionally concentrated.
23. Though from the perspective of the individual consumer, the market for retail of daily consumer goods may be local, or at most regional in scope, the parties consider the relevant geographic market in the present case to be national in scope. This view corresponds to the Commission's findings in previous cases.¹¹
24. As regards the wholesale market of daily consumer goods, the notifying parties explain that many manufacturers and wholesalers, whether operating on a local, regional, national or international level still tend to negotiate prices, volumes, nature of goods on a national level. For the purpose of this case it is therefore considered appropriate to assess the impact of the operation on a national level.
25. The parties argue that the procurement market of daily consumer goods is at least national in scope. The Commission has in its previous decisions¹² often found that procurement markets are considered national due to customer preferences and the fact that international manufacturers adapt the products they offer for sale (for example, packaging, language etc.) and establish national subsidiaries for this purpose. For the purpose of this case it is therefore considered appropriate to assess the impact of the notified operation on a national level.

C. Competitive assessment

⁸ See Rewe/Meinl – Case IV/M.1221, paragraph. 9; Rewe/Billa – Case IV/M.803 (OJ C 306, 15.10.1996, p. 4); Spar/Pro – Case IV/M.1071 (OJ C49, 14.2.1998, p. 13).

⁹ In the decision in Case Kesko/Tuko, the Commission concluded that it was appropriate to consider Kesko, including the K-retailers, as a centrally planned structural feature of the Finnish retail market. The Commission thus assessed the concentration both at wholesale and retail level and on the procurement markets.

¹⁰ See Shell UK/Gulf Oil – Case No.IV/M.1013.

¹¹ See Kesko/Tuko – Case IV/M.784 (OJ L 110, 26.4.1997, p.53); Rewe/Meinl – Case IV/M.1221, paragraph 9).

¹² See Footnote 9.

26. According to the notifying parties, the rationale behind the present transaction is to combine the parties' respective knowledge and resources in order to expand the sales of daily consumer goods and forecourt fuel within the Statoil service station network in Sweden, Denmark and Norway. The following markets will be affected by the proposed transaction: the marketing and retail of fuel as well as marketing and retail of daily consumer goods.
27. ICA has a wide range of distribution outlets varying from outlets spanning from ICA Express and ICA Nära in Sweden and Sparmat in Norway, larger supermarkets, such as ICA Plus and ICA Storbutik (Sweden) and ICA (Norway), and hypermarket type of outlets, like Maxi ICA Stormarknad (Sweden) and Maxi (Norway) as well as low-price chain of outlets like Rimi (Sweden and Norway). These ICA concepts for different retail outlets distinguish themselves on the basis of, for example, the offered product range, sales area and opening hours.
28. Statoil at present operates service stations shops having a relatively limited product range and sales area. According to the information in the Commission's possession, the ICA concept which at present most resembles that of the Statoil service station shops is ICA Express. The aim of the joint venture is to continue to develop the network of Statoil service station shops considerably in relation to their product range and sales area benefiting from the growth potential of such sales in otherwise stagnating retail markets for fuel and daily consumer goods.
29. There are three other major service station chains operating in Sweden in this respect. OKQ8 has a link with KF. Preem and 7-Eleven have jointly operated a service station in Sweden. Shell has developed its service station concept, Select, with some 100 outlets, and is expanding its distribution activity of daily consumer goods in Sweden even outside service station environment.
30. When the Statoil service station shops are developed as foreseen by the notifying parties, they will become similar to the ICA Nära concept, which corresponds less to the typical service station shop format and more to a small supermarket targeting consumers' needs for their every-day shopping. ICA Nära is the ICA outlet concept providing the highest number of ICA retail outlets in Sweden (1,257 outlets).¹³
31. Statoil will remain active on the market for wholesale of forecourt fuel in Sweden, Denmark and Norway. It will also operate a few automotive pumps in Norway and Sweden and retail of truck diesel in Sweden, Denmark and Norway. Statoil will also continue its fuel retail operations in Ireland, Poland, the Baltic States and Russia.
32. ICA will remain active on the markets for procurement, wholesale and retail of daily consumer goods in Sweden and Norway. It continues to operate procurement and retail of forecourt fuel to a limited extent in Sweden and retail of daily consumer goods in Latvia. Only Statoil has activities in Denmark. Consequently, Statoil and ICA have overlapping activities mainly in Sweden and Norway.

¹³ ICA's Annual Report 1998, p. 14.

33. There will be no overlap between the parties' activities as regards the sale of the fuel-related products and services or car-related products and services, as ICA is not involved in the retail of such products or services or is active to a very limited extent.
34. Consequently, there are several relevant product markets, which are considered to be horizontally affected by the notified operation: (i) retail of forecourt fuel in Sweden; (ii) retail of daily consumer goods in Sweden and Norway; (iii) procurement of daily consumer goods in Sweden.

Horizontally affected markets

(i) Retail market for forecourt fuel in Sweden

35. In Sweden, the total size of the retail market for forecourt fuels amounted to 6,345 million¹⁴(1000 m³) in 1997. In the same year, the market share of Statoil was 24% (1,521 million (1000 m³)) and of ICA¹⁵ 2.4% (150 million (1000 m³)) and thus the parties' combined market share amounted to 26.4%. Following the implementation of the joint venture, Detaljhandel Sverige AB will become the market leader in the retail of forecourt fuel in Sweden.
36. The largest competitors in the Swedish market include Q8-OK with an estimated 26%, Shell with 17% and Hydro with 12% market share respectively. Since the market share accretion is very small and the parties face competition from other major players on the market, the establishment of the joint venture cannot be considered to give rise to the creation or strengthening of a dominant position on this market.

(ii) Retail market for daily consumer goods in Sweden and Norway

37. According to the notifying parties it is becoming increasingly difficult to make a distinction between different types of retail outlets selling daily consumer goods (hypermarkets, supermarkets, convenience stores, service stations etc.) in Scandinavia. The notifying parties regard the retail markets in Sweden and in Norway as one market only but have, on the request by the Commission, provided the services with alternative definitions of the relevant market.

(a) Retail market for daily consumer goods in Sweden

38. When assessing the joint venture's activity and position on the Swedish retail market for daily consumer goods, it must be emphasised that the Swedish retail market for daily consumer goods is characterised by high level of vertical integration and the existence of only a few major retail chains and co-operatives.
39. ICA is the market leader on the Swedish retail market for daily consumer goods. ICA comprises of some 2,100 retail outlets of which the vast majority¹⁶ is operated by independent retailers under the ICA trademark. Statoil with its share of 34% is the market leader in retail of daily consumer goods in service station shops in Sweden. Today, the horizontal overlap between the Statoil service station shops and the retail

¹⁴ Source: Svenska Petroleum Institutet.

¹⁵ The number of service stations operated by ICA retailers is 18.

¹⁶ Approximately 4-5% of the retail outlets are majority-owned by ICA.

outlets of ICA appears mainly to concern six ICA Express outlets and 18 service stations run by ICA retailers.

40. The notifying parties maintain that the relevant market for the purpose of assessing the present notification is the overall retail market for daily consumer goods. It is submitted that in 1997, the total size of the Swedish market for retail of daily consumer goods amounted to EUR 19,245 million. The value of the total market is based on figures published by the Swedish Central Office of Statistics (Statiska Byrån – SCB). On the basis of this figure, the parties maintain that in the same year ICA had a market share of 35% (EUR 6,694 million) and Statoil 2% (EUR 384 million) on the total market for retail of daily consumer goods in Sweden. Thus the parties' combined market share would amount to approximately 37%. The largest competitors in Sweden include Kooperativ Förbundet KF with an estimated 20%, D&D with 18% and Bergendahl & Son with 2% market share respectively. On the basis of an overall market excluding sales in hypermarkets their combined market shares would not be materially different.
41. Nevertheless, the position of the joint venture and its parent on the Swedish retail market for daily consumer goods cannot be correctly assessed by employing the above figure for the total market, as it includes all daily consumer goods sold for private consumption in retail outlets and thus includes, for example, sales at kiosks and outdoor markets. The parties submit that such sales of daily consumer goods represent approximately 20% (EUR 3,849 million) of the total sale of daily consumer goods. This would indicate that the total size of the Swedish retail market for daily consumer goods relevant for the purpose of assessing the present concentration would amount to approximately EUR 15,396 million, whereby ICA's market share would amount to an approximate 43%. The Swedish Competition Authority (Konkurrensverket) estimated in its decision¹⁷ of last year concerning ICA's market share to amount to 40-45%. Competitors would include KF with a market share of about 25% and D&D with about 20%.
42. If the relevant market were construed more narrowly as the retail market for daily consumer goods in service stations, the total size of the market in Sweden was EUR 1,147 million¹⁸ in 1997. The parties' combined market share would thus be approximately 36%, Statoil having a market share of 34% (EUR 334 million) and ICA 2% (EUR 21 million). The main competitors on the Swedish market include Shell with an estimated market share of 24% and Preem with 8% market share. Other competitors account together for 34% share of the market.

(b) Retail market for daily consumer goods in Norway

43. Through its recent acquisition of the Norwegian company Hakon, ICA is currently also active on the Norwegian retail market for daily consumer goods. Thus, ICA is present on the Norwegian market through Hakon's 1,152 retail outlets, of which 358 are owned by ICA, 422 outlets are run by franchisees and 378 outlets are owned by the retailer connected to ICA by contractual arrangements relating to distribution and purchasing activities. The retail outlet network in Norway is divided into four different store concept groups: Sparmat, ICA, Maxi and Rimi. Sparmat is the ICA outlet concept having the highest number of retail outlets in Norway (156 outlets).

¹⁷ Decision of the Swedish Competition Authority (Konkurrensverket) of 8 April 1998 (Dnro 1077/97).

¹⁸ AC Nielsen, VAT excluded.

44. The notifying parties submit that in 1997, the total size of the Norwegian market for the retail of daily consumer goods amounted to EUR 10,962 million.¹⁹ In the same year, the combined market share of the notifying parties would have amounted to 25%, whereby Statoil having a market share of 2% (EUR 218 million) and ICA 23% (EUR 2,493 million). The main competitors on the Norwegian market include NorgesGruppen with an estimated 33%, NKL with 25% and Reitan Gruppen with 13% market share respectively of the overall retail market for daily consumer goods.
45. As regards the retail market for daily consumer goods sold in service stations, the total size of the Norwegian market was EUR 791 million²⁰ in 1997. Statoil had a market share of 22% (EUR 177 million) in the same year. At present, there is no overlap between the parties' activities, as ICA is not active in the retail market for of daily consumer goods in service stations in Norway. The main competitors of Statoil on the Norwegian market include Shell with an estimated market share exceeding 24%, Esso with 23% and Hydro-Exxon with 19% of the market.
46. Finally, should the store concept evolve so as to correspond in principle to that of a supermarket from the point of view of competition, it cannot be excluded that in the future the joint venture should be assessed on the basis of the retail market for daily consumer goods, excluding sales in hypermarket type of outlets. The notifying parties estimate that the Norwegian market amounted to EUR 10,503 million in 1997. Statoil's market share was in the same year 2% (EUR 218 million) and ICA's 22% (EUR 2,291 million). The competitors on the Norwegian market include NorgesGruppen with a market share of 33% and NKL with 25% market share.
47. On the basis of the information in the Commission's position and with a view of the several major competitors operating on the Norwegian retail market for daily consumer goods, it can be concluded that the joint venture would not create or strengthen a dominant position as a result of which competition would be significantly impeded in Norway.

(iii) Procurement of daily consumer goods in Sweden

48. The Commission has held in its previous decisions that the procurement of daily consumer goods involves the sale of daily consumer goods by producers of such goods to customers such as wholesalers, retailers, and other enterprises. Not all producers supply the full range of daily consumer goods, some may specialize, for example, in individual products or product groups, such as fresh products, or dry food or non-food products. The Commission has also concluded that though each product or product group constitutes an individual product market, as it is not, or imperfectly, substitutable for other products or product groups from the point of view of the demand side. If the pattern of demand has been concentrated, the Commission has assessed the impact of the increased buying power, brought about by the new demand structure, across the whole range of daily consumer goods.²¹
49. Pursuant to the *Non-fuel Wholesale Agreement* concluded between ICA and the joint venture, ICA will be supplying daily consumer goods to the joint venture. Under this Agreement, ICA will offer and the joint venture may purchase its requirement of daily

¹⁹ Nielsen Norge AS.

²⁰ AC Nielsen.

²¹ See Kesko/Tuko – Case IV/M.784 (OJL 110, 26.4.1997, p.53).

consumer products from ICA on a non-exclusive basis. According to the notifying parties, this means that the joint venture will remain free to purchase its products from other suppliers. ICA will give the joint venture the so called “most-favoured-customer-treatment”, which means that it will be offered the same terms and conditions as those which ICA applies to retailers trading under its own trademarks ICA/Hakon. Thus, the joint venture would be able to enjoy cost benefits resulting from its access to ICA’s economies of scale in purchasing, which is achieved through bundling of the purchasing power of the ICA. The transaction thus involves extending the most-favoured-customer-treatment enjoyed by ICA retailers to a network of service stations operating under the trademarks of Statoil and ICA Express, so that these will have an interest to purchase largely through ICA.

50. The notifying parties submit that in 1997, the total size of the Swedish market for procurement of daily consumer goods amounted to EUR 12,519 million. In the same year, the combined market share of the notifying parties would have amounted to 27.5%, whereby ICA having a market share of 26% (EUR 3,294 million) and Statoil 1.5% (EUR 192 million). The largest competitors in the procurement market of the daily consumer goods in Sweden include D&D with an estimated 16%, Kooperativet Förbundet KF with 13% and Bergendahl & Son with 2% market share respectively.
51. As regards Norway, the notifying parties submit that in 1997, the total size of the Norwegian market for procurement of daily consumer goods amounted to EUR 7,100 million. In the same year, the combined market share of the notifying parties would have amounted to 15%. ICA’s market share would be 14% (EUR 970 million) and Statoil’s 1% (EUR 76 million). The competitors on the Norwegian market include NorgesGruppen with an approximate market share of 33% and NKL with an estimated 25% market share.
52. On the basis of the information that the Commission has in its possession, it can be concluded that the notified operation does not create or strengthen a dominant position on this market.

Vertically affected markets

53. Statoil and ICA are present on a number of markets vertically related to that of the joint venture. On most of these markets one or the other of the notifying parties is engaged in business activities upstream of the joint venture’s product market and holds in that product market a market share exceeding 25%. Thus, as elaborated below, such markets are considered to be vertically affected. The notifying parties did not originally hold these markets as affected by the concentration but they have subsequently submitted information concerning these markets.

(i) Wholesale of forecourt fuel in Norway, Sweden and Denmark

54. In the wholesale of forecourt fuel in Norway, the total market amounted to 2,957 million²² (1000m³), Statoil holding a market share of 28% (284 million (1000m³)) in 1997. The joint venture will be active in the retail of forecourt fuel in Norway. Therefore, this market constitutes a vertically affected market. Statoil’s main competitors in Norway include Esso with an estimated 23%, Shell with 18% and Hydro-Texaco with 18% market share respectively.

²² Norsk Petroleums Institut.

55. In the wholesale market for forecourt fuel in Sweden, the total market amounted to 6,345 million²³ (1000m3) in 1997, Statoil holding a market share of 24% (1,521 million (1000m3)) in the same year. On the basis of the information submitted by the notifying parties, Statoil has a number of competitors on the Swedish market including Q8-OK with an estimated 26% market share, Shell with 17%, Hydro with 12% and Preem with 11% market share respectively. There will therefore be sufficient supply for other networks.
56. Statoil will also remain on the wholesale market for forecourt fuel in Denmark, where the total market amounted to 2,536.000 litres in 1996. In the same year, the market share of Statoil amounted to 19% (481,000 million litres) thus remaining below the threshold of 25%.
57. On the basis of the foregoing, it can be concluded that the notified operation does not create or strengthen a dominant position on any of these markets.

(ii) Wholesale of daily consumer goods in Sweden and Norway

58. The Commission has held in its previous decisions²⁴ that the products handled by wholesalers of daily consumer goods, naturally, mainly reflect the sales of such products at retail level and the use of such products by industrial households. ICA will continue to be active on the wholesale market for daily consumer goods through ICA Servicehandel AB in Sweden and through Hakon's respective operations in Norway.
59. The notifying party submits that the wholesale market of daily consumer goods consists of three types of wholesalers, whole range wholesalers like ICA Servicehandel AB, wholesalers supplying particular categories of products and the so-called niche wholesalers supplying drinks, ice-cream, tobacco, dairy products, meat, perishables and bread. It is the view of the notifying parties that all three types of wholesalers belong to the same market, which neither should be divided on the basis of the type of the outlet that is being served.
60. According to the notifying party, the total wholesale market for daily consumer goods in Sweden amounted to EUR 6,460 million in 1998, ICA holding a market share of 4% (EUR 236 million). The notifying parties submit that the present transaction would only increase the parties market share by 5% totalling in 9% of the total wholesale market (increase in sales: EUR 79 million).
61. According to the notifying party, the total wholesale market for daily consumer goods in Norway amounted to EUR 3,594 million in 1997, ICA/Hakon holding a market share of 2% (EUR 88 million). If one would take a narrower view of the wholesale market comprising the wholesale to convenience stores only, the total market would amount to EUR 622 million in 1997, giving, according to the notifying parties, ICA/Hakon a market share of 14% (EUR 88 million). The parties' main competitors in the Norwegian market for wholesale of daily consumer goods include KOFF with 5%, Joh. Johannson with 2%, Forbrukersvirksomhet NKL 2%, Remagross/Kjedsberg/Univest 2% market shares respectively.

²³ Norsk Petroleums Institut.

²⁴ See Kesko/Tuko – Case IV/M.784 (OJL 110, 26.4.1997, p.53).

62. On the basis of the above, it can be concluded that the notified operation does not create or strengthen a dominant position on the above markets.

IV. ANCILLARY RESTRAINTS

63. The notifying parties submitted a number of contractual obligations they wish to be declared ancillary to the concentration. These contractual obligations cover non-compete obligations, exclusive rights, most favoured customer arrangements, intellectual property rights and loyalty concepts and customer service arrangements.

a) Non-compete obligations

64. Statoil undertakes for an indefinite period not to conduct any business activity within Scandinavia, which will compete with the joint venture, including the purchase of another service station network. This non-compete-cause confirms Statoil's lasting withdrawal from the market assigned to the joint venture and for the duration of the joint venture it can be regarded as directly related and necessary to the implementation of the joint venture.
65. ICA undertakes not to own or develop any new service station network within Scandinavia other than the joint venture. However, ICA will have the right to pursue investments in fuel related operations as part of its current and future operations, which are necessary to compete effectively in the markets in which the ICA group is active. To the extent that these undertakings restrict ICA's possibilities to participate in new service station networks, the non-compete clauses can be regarded as directly related and necessary to the implementation of the concentration for the duration of the joint venture, as they reflect the withdrawal of ICA from filling station business acquired by the joint venture.

b) Supply agreements

66. Statoil has concluded a *Fuel Supply Agreement* with the joint venture, through which Statoil will be the sole supplier of refined petroleum products to the joint venture. This Agreement will last for three years and thereafter it will be automatically terminated without a further notice. Statoil will arrange for transportation of the products to the service station tanks, and these deliveries will be made at market prices plus distribution costs.
67. Statoil has also concluded a *Lubricants Supply Agreement* with the joint venture, through which the joint venture will be obliged to purchase all its requirements of lubricants for the service stations from Statoil. This agreement was concluded on 4 May 1999 and will terminate automatically on 30 June 2001, thus within two and a half years.
68. The notifying parties claim that these two agreements are directly related and necessary to ensure that the needs of the joint venture are met during the start-up period. These provisions are designed to ensure stable supplies to the joint venture during a start-up period, whose duration in both cases is limited to a maximum of three years, and they allow Statoil to adjust to the transfer of the filling station network which is currently fully integrated. They can be considered to be ancillary to the concentration under the particular circumstances of this case, to the extent that these agreements are restrictive of competition.

c) Intellectual property rights

69. Statoil will grant the joint venture a non-exclusive licence for the use and display of Statoil owned trademarks and related designs in Scandinavia in connection with the activities of the joint venture. The agreement obliges the joint venture to use Statoil's trademark for as long as the joint venture sells petroleum products through the present network of service stations. The joint venture will pay an adjustable annual fee for the use of the rights under the agreement and it will remain in force for the term of the registration of the trademarks and related designs or until the exit of Statoil from the joint venture. The purpose of the agreement is to ensure that the joint venture can operate under the Statoil trademark without transferring the ownership rights of that trademark.
70. ICA will grant the joint venture a non-exclusive licence to use the trademark "ICA Express" within Scandinavia. The joint venture will, however, be free to decide which outlets within its network will use the trademark. The joint venture will pay an annual fee for the use, which will be adjusted annually. The agreement will remain in force for the term of registration of the trademark and it is ICA's intention that the trademark agreement shall remain in force as long as ICA is 50% owner of the joint venture. ICA may, nevertheless, terminate the agreement after 2005 and the joint venture may also terminate the agreement at any stage, with a 24month notice. The purpose of the licence is to give the joint venture the possibility to develop its sales of daily consumer goods under an established trademark.
71. The restrictions connected with the granting of these licenses only serve as substitutes for the transfer of property rights and can therefore be considered as directly related and necessary for the implementation of the concentration.

d) Loyalty concepts and customer service arrangements

72. A *Loyalty Concept Agreement* will govern Statoil's right to participate in the loyalty concept of the JV and it will remain in force as long as Statoil is shareholder in the joint venture. It is aimed at assuring that the customers of Statoil and the joint venture will have access to the same loyalty cards as before, irrespective of whether the purchases are made at Statoil or service stations operated by the joint venture. For this reason, the loyalty concept can be considered to be directly related and necessary for the implementation of the concentration.
73. The JV and Statoil will, for a transitional period of three years, enter into a *Customer Service Agreement* through which Statoil will provide services to the joint venture with respect to the administration of the card business. These services will be made on an arms lengths basis and the aim of the agreement is to ensure that the card business will function properly during the start-up period of the joint venture. Ownership of the cards business will thereafter be transferred to the joint venture (except for those related to the truck business). To the extent that these provisions are restrictive they may be regarded as ancillary.

VI. CONCLUSION

74. 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 (EEC) No 4064/89.

For the Commission,

Signed

K. VAN MIERT

Member of the Commission