

***Case No COMP/M.2425 -  
COOP NORDEN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/07/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.07.2001

SG (2001) D/290467

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

**Subject: Case No COMP/M.2425 - Coop Norden  
Notification of 25.06.2001 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup> (The “Merger Regulation”)**

1. On 25.06.2001, the Commission received a notification of a proposed concentration by which the undertakings Kooperativet Förbundet (KF), Sweden, Faellesforeningen for Danmarks Brugsforeninger (FDB), Denmark, and Norges Kooperative Landsforening (NKL), Norway, will establish a joint venture to be named Coop Norden.

## **I. THE PARTIES**

2. KF is active in wholesaling and retailing of daily consumer and speciality goods mainly in Sweden.
3. FDB is active in wholesaling and retailing of daily consumer and speciality goods in Denmark.
4. NKL is active in wholesaling and retailing of daily consumer and speciality goods in Norway.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## **II. THE OPERATION**

5. The parties will transfer their respective daily consumer goods businesses to the joint venture. They will establish the joint venture with the share stakes of 42 % (KL), 38% (FDB) and 20% (NKL) respectively.

## **III. CONCENTRATION**

6. The parties have submitted that they will have joint control over Coop Norden and that Coop Norden on a lasting basis will perform all the functions of an autonomous economic entity.
7. According to the Shareholders Agreement the parties shall appoint 12 members to the Board of Directors as follows: KF 5, FDB 4 and NKL 3 members. Further, the employees shall have a right to appoint three members of the board, one from each country. Therefore, the board will have 15 members.
8. Pursuant to the Shareholders Agreement, if the Articles of Association do not stipulate qualified majority, decisions of the board will be taken with simple majority between the permanent members of the board. The Shareholders Agreement provides that unanimity is required on certain topics. However, the topics that require unanimity of the Board of Directors are not of a nature conferring *de jure* joint control.
9. Therefore, there are no legally binding veto rights about the most important strategic decisions to be decided by the Board of Directors (e.g. with regard to business plan, budget etc). Even though the parents will transfer their core businesses to the joint venture, i.e. their entire retailing, wholesaling and procurement businesses of daily consumer goods, it is unclear why this fact should make the parents co-ordinate their voting behaviour. Therefore, it cannot be ruled out that the parent would vote disparately. Consequently no joint control can safely be established.
10. However, the Commission is of the opinion that the transaction is a concentration as Coop Norden is acquiring the respective businesses of KF, FDB and NKL within procurement, wholesale and retail of daily consumer goods and consequently acquiring control within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup>. Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of

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<sup>2</sup> 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.

their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## V. COMPETITIVE ASSESSMENT

### A. Relevant product markets

#### *i) The market for procurement of daily consumer goods*

12. This market involves the sale of daily consumer goods by producers to various customers such as wholesalers, retailers, restaurants, specialised shops, catering companies etc.
13. From the demand side each product or product group constitutes an individual product market as it is not, or only imperfectly, substitutable for other products or product groups. However, since the pattern of demand is broadly similar and concentrated in the respective countries it would not be necessary to assess the impact of the concentration on each individual product or group of products. With reference to the Kesko/Tuko case<sup>3</sup> the parties submit that the market for procurement of daily consumer goods constitutes one single product market.

#### *ii) The market for wholesale of daily consumer goods*

14. The parties submit that the market for wholesale of daily consumer goods involves the sale and distribution of daily consumer goods to third parties such as retailers and other daily consumer goods customers.
15. Based on the same arguments as for the market for procurement of consumer goods the parties submit that the market for wholesale of daily consumer goods constitutes one single product market and not several product markets for each product or group of products.

#### *iii) The market for retail of daily consumer goods*

16. The parties submit that there is a market for retail of daily consumer goods that consists of the provision of a basket of food and non-food products typically sold by retailers (e.g. supermarkets and hypermarkets).
17. On the basis of previous decisions by the Commission<sup>4</sup> the parties submit the competition in this market takes place between the stores carrying a range of household necessities in one shop with the desired facilities (e.g. parking, trolleys etc.). The parties also stress that specialised outlets such as butchers and bakers, kiosks or petrol stations etc. are not competitors on this market as such outlets do not offer a service and selection of goods on the same level.

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<sup>3</sup> Commission decision 97/277/EC – M. 784 - Kesko/Tuko of 20.11.96

<sup>4</sup> M. 784- Kesko/Tuko (OJ L 110, 26.4.1997, Rewe/Billa and Spar/Pro - M.1303 – Adeg/Adeka) OJ C 385, 11.12.1998), M. 1221- Rewe/Meinl (OJ L 274, 23.10.1999).

*Conclusion on product market definitions*

18. Based on the submissions of the parties and the Commission's practice, the relevant product markets can for the purposes of this case be taken to be the markets for procurement, wholesale and retail of daily consumer goods.

B. Relevant geographic markets

*i) The market for procurement of daily consumer goods*

19. With regard to the geographic scope of the market for procurement the parties emphasize that most of the daily consumer goods procured by the parties are produced in their home countries. The parties also argue that imported products are adjusted in terms of package and language to the country where the products are to be sold. Moreover, many international producers negotiate with their customers on a national level via their own subsidiaries and use the availability of national distribution channels.
20. Consequently, the parties submit that the geographic scope of the markets for procurement of daily consumer goods in Sweden, Denmark and Norway is national. However, for the purposes of this case it can be left open whether the geographic scope of these markets is national or wider, since the concentration would not create competition problems on any alternative market definition.

*ii) The market for wholesale of daily consumer goods*

21. Based on an argumentation along the same lines as for the procurement market the parties submit that the geographic markets for wholesale of daily consumer goods in Sweden, Denmark and Norway are to be delimited nationally. However, for the purposes of this case it can be left open whether the geographic scope of these markets is national or wider, since the concentration would not create competition problems on any alternative market definition.

*iii) The market for retail of daily consumer goods*

22. As regards the relevant geographic scope of the market for daily consumer goods the parties refer to the Commission's decisions in previous cases. In these cases the Commission found that from the consumer's viewpoint there are parameters indicating a regional or national market. The local markets can be defined as a circle with a radius of approximately 20 minutes by car due to the distance to the individual sales outlet. However, the parties argue that the competitive conditions for the major players in the market are not limited to local competition. This is due to the fact that these players plan their strategies on a national level as they operate according to national chain concepts, e.g. regarding product assortment, marketing, service level and advertising.
23. Consequently, the parties submit that the geographic markets for retail of consumer goods in Sweden, Denmark and Norway are national. However, for the purposes of this

case it can be left open whether the geographic scope of these markets is local, national or wider since the concentration would not create competition problems on any alternative market definition.

C. Competitive assessment

24. The concentration does not raise any competition problems on national markets as the parties are active in different Member States. Furthermore, none of the three parties have a market share of any national market above 40%. The strongest position is found on the procurement and the retail markets in Denmark where FDB has market shares slightly below [40%] In Sweden and Norway the parties' positions in the retail market are around [20-30%]. In both Sweden and Norway, there are other retail groups with higher market shares, while FDB is the largest retail group in Denmark. However, FDB faces strong competition from Dansk Supermarket with [20-30%] and SuperGros A/S with [10-20%].
25. On a geographic market definition encompassing all three countries, Coop Norden will not have a share of any of the three product markets exceeding [25-35%].
26. Hence the concentration would not lead to competition problems on any alternative market definition.

**VI. CONCLUSION**

27. 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

Mario MONTI  
Member of the Commission