EN

Case No COMP/M.4336 - MAN / SCANIA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the Notifying Party

Dear Sir/Madam,

Subject: **Case No. COMP/M.4336 – MAN/Scania**
Notification of 30.10.2006 pursuant to Article 4 of Council Regulation No 139/2004[1]

I. INTRODUCTION

1. On 30 October 2006, the Commission received a notification of a proposed concentration by which MAN AG ("MAN", Germany - also referred to as the "Notifying Party") acquires Scania AB ("Scania", Sweden).

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 ("the EC Merger Regulation") and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

II. THE PARTIES

3. **MAN** develops, manufactures and sells heavy and medium-sized trucks from 7.5 to 50 tonnes gross weight as well as buses and coaches, chassis and floor assemblies for buses. In addition, MAN manufactures and sells industrial and marine engines, large two-stroke

1 OJ L 24, 29.1.2004 p. 1.

and four-stroke diesel engines, turbo-machines and also provides industrial services. Its main activities are in Europe.

4. **Scania** develops, manufactures, markets and sells trucks with a gross vehicle weight of more than 16 tonnes for long-haulage, construction haulage and distribution of goods. Scania also manufactures and sells buses and chassis for buses. In addition, Scania has some industrial and marine engines activities. Scania is mainly active in Europe.

III. THE OPERATION

5. On 18 September 2006, MAN announced its decision to make a public offer to acquire the entire share capital of Scania. The original offer – consisting of a cash only offer or a combined offer of cash and shares in MAN – was valid from 20 November to 11 December 2006. On 8 December 2006, MAN announced that the offer had been extended until 31 January 2007.[2]

6. The largest shareholders of **Scania** are Volkswagen AG ("VW", Germany) which holds 18.7% of the capital and 34% of the votes in Scania and Investor AB ("Investor", Sweden) – an investment company controlled by the Wallenberg family. Investor holds 10.8% of the capital and 19.3% of the votes in Scania and the Wallenberg Foundation holds an additional stake of 5.8% of the capital and 10.6% of the votes. Together they hold 16.6% of the share capital and 29.9% of the votes.

7. VW recently also became the largest shareholder of MAN. On 3 October 2006, VW announced that it had acquired 15.06% of MAN's voting shares as a strategic investment[3]. Meanwhile, VW acquired additional shares in MAN and currently holds approximately 21.6% of the voting shares in MAN[4]. Since currently there is no other shareholder controlling more than 5% of the votes[5], the Commission has assessed whether Volkswagen has acquired de-facto control over MAN.[6]

8. The Articles of Association of MAN do not confer any special rights for large shareholders. VW is currently represented neither on the executive board, nor on the supervisory board, but this is likely to change following the recent increase of VW's

2 MAN press release of 08.12.2006.

3 Under the German share dealing regulation (*Wertpapierhandelsgesetz – WpHG)* an increase or decrease of shareholding above or below 5%, 10% and 25% must be communicated. Since VW announced the acquisition of 15.06% in October 2006 and so far has not communicated an increase of its shareholding above 25% it can be excluded that (i) before October 2006 VW has held a share in MAN of more than 5%, and (ii) VW currently holds a share in MAN of more than 25%.

4 According to a letter from VW to the Commission of 27.11.2006, VW controls 21.6% of the voting rights.

5 According to MAN AG's annual report 2005, p.37, the largest shareholder in MAN on 19.7.2005 was AXA S.A. with 10.09% of the voting rights. According to MAN, AXA S.A reduced its shareholding in the course of the year 2006 to 3.0%.

6 Volkswagen has stated that the company does not have de-facto control over MAN and refers to a decision by the Bundeskartellamt which comes to this conclusion based on an assessment under German law; Letter from Volkswagen to the Commission of 27.11.06.

holding in MAN.[7] Decisions by the executive board and the supervisory board are taken by simple majority with the chairman having a casting vote.

9. Given the absence of any arrangements conferring special rights to VW, any de facto sole control by VW over MAN would be based on the possibility that VW's share of 21.6% would be enough to control the proceedings at the annual MAN shareholders' meeting. The attendance rate of MAN's annual shareholders' meetings was [50-60%] in 2002, [40-50%] in 2003, [40-50%] in 2004, [30-40%] in 2005 and 39.3% in 2006.[8] As indicated above, VW became MAN's largest shareholder in October 2006[9]. VW furthermore is the only shareholder holding more than 5% of MAN's capital stock. Against this background, MAN expects the attendance rate to increase in the future, up to 50-60%[10] and it seems likely that the attendance rate at the next shareholders' meeting will be significantly higher than in 2006, in which case a 21.6% stake will not be sufficient to obtain a majority at the shareholders' meeting. The Commission can therefore not conclude that VW is exercising control over MAN.

IV. CONCENTRATION

10. MAN intends to acquire all the shares of Scania. The notified transaction therefore concerns the acquisition of sole control of Scania by MAN.

11. On this basis the Commission concludes that the proposed transaction constitutes a concentration within the meaning of Article 3(1) of the EC Merger Regulation.

V. COMMUNITY DIMENSION

12. The parties have a combined worldwide turnover of more than € 5 billion (MAN: € 12.9 billion; Scania: € 6.8 billion) and each of the parties' Community-wide turnover is more than € 250 million. MAN does not achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension (Art. 1 (2) Merger Regulation).

VI. PROCEDURE

13. After having been informed that based on the initial results of the market investigation it could not be excluded at that stage of the procedure that the notified operation might raise serious doubts as to its compatibility with the common market with regard to certain markets for the supply of city buses, inter-city buses and coaches in Sweden, Spain and

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7 At the next annual shareholders meeting in May 2007, MAN has stated its intention to offer VW two (out of twenty) seats at the supervisory board.

8 The steep decrease in attendance in 2005 compared to 2004 is explained by the fact that a major shareholder, Regina Verwaltungsgesellschaft mbH ("Regina", Germany) sold its 25.2% stake share in January 2005. Regina was present at the shareholders' meetings in 2002-2004.

9 MAN's shareholders' meeting in the year 2006 with a very low attendance rate of less than 40% took place on 29 May 2006.

10 MAN argues *inter alia* that VW's future presence, the fact that MAN is likely to be watched more closely by shareholders and the increasing importance of proxy votes and investor relations activities, will increase the attendance rate.

Portugal, the Notifying Party offered commitments on 29 November 2006 with a view to remove possible serious doubts. However, after being informed by the Commission that the further market investigation had demonstrated that the operation was not likely to significantly impede effective competition on 20 December 2006 the Notifying Party withdrew the commitments offered.

VII. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

1. Trucks

14. The Notifying Party, in line with the previous Commission Decisions (Case No COMP/M.1672 – *Volvo/Scania*[11], Case No IV/M.1984 *Volvo/Renault*[12]), submits that the truck market is divided into three market segments according to the truck's gross vehicle weight: the light-duty segment (below 5 tonnes), the medium-duty segment (5-16 tonnes), and the heavy-duty segment (above 16 tonnes).

15. A number of arguments are put forward by MAN in support of defining separate product markets for light, medium and heavy trucks. First, heavy, medium and light trucks are used for different types of transport and the three categories are not considered by customers to be interchangeable. The technical configuration of heavy trucks is more sophisticated than of medium and light trucks as regards the key components such as the engine type, axle type and number of axles. Because of these different technical requirements, different production lines are typically used and different know-how is involved to produce trucks of each category. Accordingly, not all manufacturers are present in all weight classes, but concentrate their production on one range while having little or no presence in another range (with regard to the present transaction, for example, Scania is active only in the segment of trucks over 16 tonnes).

16. The market investigation has confirmed the market definition described above. The Commission therefore concludes that trucks belong to different relevant product markets depending on their gross weight. Since Scania only manufactures heavy trucks over 16 tonnes, only this market will be analysed further. The Commission has considered whether this market needs to be sub-divided further.

(a) Heavy trucks: no separate markets for rigid trucks and tractor trucks

17. In the notification, MAN submits that the market of heavy trucks (trucks weighing more than 16 tonnes) should not be further divided into rigid trucks and tractor trucks. It could indeed be argued that, from a demand side perspective, heavy rigid trucks and heavy tractor trucks serve different needs: while rigid trucks are "integrated" trucks with a single body, from which no semi-trailer can be detached, tractor trucks are detachable, in the sense that a semi-trailer can be added to the top back of the cabin. MAN argues that both segments belong to the same market as each truck manufacturer is produces both types.

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[11] Commission decision of 14.03.2000

[12] Commission decision of 01.09.2000

18. In its previous decision practice, the Commission considered that the distinction between rigid trucks and tractor trucks could be left open.

19. The market investigation carried out by the Commission broadly confirmed the Notifying Party's view. Indeed, the vast majority of competitors and customers responding to the Commission's market investigation have indicated that rigid trucks and tractor trucks belong to the broad category of a heavy truck market. The Commission therefore considers that the different types of heavy trucks (included rigid heavy trucks and heavy tractor trucks) do not constitute separate product markets but belong to the heavy truck market.

20. Trucks are also differentiated with regard to many other *options* which are chosen by the customer pursuant to its specific needs and the required type of transport (for example power of the engine, number of axles, type of cabin etc.). However the market investigation showed that all heavy truck manufacturers are generally able to offer trucks with all main required types of equipment and key elements. The market for heavy trucks should therefore not be further sub-divided according to the technical characteristics of the truck.

21. This applies notably to the possible distinction between trucks using different *emission reduction technologies*. Indeed, truck manufacturers are offering two main technologies in order to comply with increasingly strict emission standards, namely the so-called EGR[13]-technology and the SCR[14]-technology. Both technologies fulfil the Euro 4 norm, which is compulsory from 1 October 2006.

22. MAN and Scania are the only suppliers of EGR-technology for buses and trucks in Europe, whereas the other large producers such as Volvo, DC and DAF have opted to offer the competing SCR technology to their European customers. However, neither EGR, nor SCR are proprietary technologies, therefore producers are not prevented to manufacture both technologies. Indeed, Volvo, DC and DAF already use the EGR technology in vehicles produced for sale in the United States. The EGR technology used in the United States may be developed further to fulfil EU norms and be fitted into vehicles destined for the EU. The SCR technology is compliant with the future Euro 5 norm which will be applicable from 2009. The market investigation clearly indicates that also from a demand-side perspective both technologies compete with each other and are regarded as substitutable by most customers. There is a broad consensus among the large manufacturers that, while both technologies have certain advantages and disadvantages, there is no customer group for which it is absolutely necessary to use the one or the other technology.

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[13] EGR = Exhaust Gas Recirculation. EGR is a self-contained technology which is directly fitted to the engine without auxiliary components.

[14] SCR = Selective Catalytic Reduction. SCR is a system by which emissions are after-treated by means of a chemical solution (urea). The technology includes components that are fitted to the chassis, including a separate tank for the urea additive. The use of the SCR technology requires building up an infra-structure for the distribution of the additive.

(b) Military trucks

23. MAN submits that *military trucks* belong to a product market which is separate from the market for civil heavy trucks. It should be noted that the target company, Scania, does not agree with a separate military truck market, arguing that the high degree of supply side substitutability is in favour of a broader market definition. However, even Scania concedes the existence of many substantial differences between military and civil trucks. Indeed, even though the technical differences between trucks for military and for commercial use may be limited, there are a number of important differences that prevent a producer of civil trucks to enter the military truck market, such as: (i) the different structure of customers for commercial trucks and military trucks who require separate sales and distribution networks; (ii) the customers' wish to buy military equipment from domestic suppliers which may require opening local business operations; (iii) the longer life-cycles of military trucks which are used over much longer periods of time than commercial vehicles, requiring maintenance, service and supply of spare parts over a longer period than civil trucks; (iv) the importance of being able to offer the whole range of military trucks for military customers and (v) the much longer and complex procurement process which can take up to 6-7 years before a decision is taken.

24. The Commission's market investigation showed that the vast majority of customers and competitors confirmed that civil and military trucks are on distinct markets. They specified that a significant investment in terms of organisation, human resources and finance is necessary in order to successfully enter the military trucks business. In addition, the market investigation also showed that, from a demand-side point of view, the requirements for military trucks (such as the need for local production and service and for well-established contacts with the national public procurement offices) are very specific. The Commission therefore concludes that a product market for military trucks has to be defined which is separate from the market for civil trucks.

25. According to the Notifying Party, the market for military trucks should be further divided into the market for military *on-road trucks* and the market for military *off-road trucks* as they differ in a number of ways: (i) they are not built on the same technical platform; (ii) the production facilities and product know-how are different and (iii) it is technically impossible to convert a military off-road truck into an on-road truck, and *vice versa*. The market investigation has shown that the vast majority of competitors indeed consider the on-road military trucks and off-road military trucks to be in distinct markets. For the purpose of the present case, the question whether one or more separate product markets for military heavy trucks should be defined can be left open as the merger does not raise any competition concerns even assuming the narrowest definition.

2) Buses, Coaches and Chassis

(a) City Buses, Inter-city Buses and Coaches

26. In previous decisions[15], the Commission identified three different market segments for buses: city buses, inter-city buses and touring coaches. Despite possible partial overlaps between the three market segments, the Commission consistently regarded them as

[15] Cases IV/M.477, *Mercedes-Benz/Kässbohrer,* Commission decision of 14.02.1995; IV/M.1672, *Volvo/Scania,* Commission decision of 14.03.2000; COMP/M. 1980 – *Volvo/Renault V.I.,* Commission decision of 01.09.2000 and COMP/M.2201, *MAN/Auwärter,* Commission decision of 20.06.2001.

separate product markets. This is also the view taken by the Notifying Party as well as by the target company.

(1) City buses

27. City buses are designed for public transport in urban areas. They are used for carrying a large number of passengers over relatively short distances and for relatively short periods of time. Accordingly, city buses offer space for standing passengers, tend to have a low-floor or are at least low-entry with few, if any, steps as well as several doors, which are wider than in other types of buses to allow for rapid passenger entry and exit.

(2) Inter-city buses

28. Inter-city buses are designed for public overland transport in rural districts and inter-city travel. In line with the nature of the service, ease of entry and exit are less important in inter-city buses than for city buses. Inter-city buses are normally not particularly luxuriously equipped. To date, most inter-city buses do not have a low-floor. They generally have more powerful engines than city buses but less powerful engines than touring coaches.

(3) Coaches

29. Coaches are intended to serve the leisure market, mainly for long-distance tourist travel. They tend to be higher than city and inter-city buses and are equipped in a comparatively luxurious manner. In particular, they are often equipped with special storage space for luggage, air conditioning, toilets and television screens, which make such buses more suitable for longer trips. Low-floor technology and ease of entry are of little or no importance. A touring coach will normally be equipped with a manual gearbox, whereas city and inter-city buses tend to have automatic gearboxes.

30. The market investigation carried out by the Commission confirmed that this classification into three distinct relevant product markets remains valid. The fact that the three bus types may share certain features or uses - e.g. both city and inter-city buses are available with low-floor technology, certain bus models may be used for scheduled service transport as well as for touring and excursions - is not in itself enough to indicate a sufficient degree of demand-side substitutability. The market enquiry revealed that substantial differences in terms of technical specifications, equipment and demand structure still exist. The fact that the boundaries between the three product markets are not always completely clear cut will be taken into account in the Commission's assessment of certain bus and coach markets[16].

(4) Chassis for buses and coaches

(i) The market for chassis upstream to the markets for buses and coaches

31. MAN submitted that apart from the markets for finished (full) buses and coaches there is a distinct (upstream) market for the provision of chassis.[17] Chassis are half-finished products consisting of the frame components, the driver's station and the power train (engine, transmission, driveshaft, axles and suspension) which are used for constructing a

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16 See notably the assessment of the Swedish coach and inter-city bus markets below.

17 Cf. submission of 08.12.2006, p. 4.

finished bus or coach. Where chassis manufacturers (mainly the major integrated bus manufacturers) do not produce the full bus or coach within their own group, they either sub-contract an external company specialised in the body work of buses ("body builders") to build up the body for them, or they sell the chassis to a body builder who would perform the body work and sell the complete bus or coach to the end customer.

32. While customers usually buy and pay the whole bus either from a bus manufacturer or a body-builder, some customers (essentially in Portugal and Spain) pay the chassis themselves and pay to the body builder the cost for the body and the assembly (so-called "two-invoice system"). Where body and chassis stem from different suppliers, the finished bus or coach often bears the brands of both the chassis maker and the body builder. Four different options of how a finished bus or coach is produced and sold can therefore be distinguished:

- *Option 1*: customers acquire a complete bus or coach from an integrated bus manufacturer who produced the entire vehicle within its own group;
- *Option 2*: customers acquire a complete bus or coach from a chassis manufacturer (usually one of the major bus manufacturers) who procures the assembly of the body from an external body builder (sub-contracting);
- *Option 3*: customers acquire a complete bus or coach from a body builder who sources the chassis from a chassis manufacturer;
- *Option 4* ("two-invoice system"): customers acquire a bus or coach assembled by a body builder through two separate contracts: one with a chassis manufacturer for buying the chassis, and another with a body builder for the body work[18].

33. The chassis market therefore principally concerns a market which is *upstream* to the bus and coach markets. MAN, however, submits that not only the upstream supply of chassis to body builders (Option 3), but also chassis sales to end customers under the "two invoice system" (Option 4) should be considered as parts of the chassis market. In practical terms there is, according to MAN, little difference between supplying the chassis to the body builder and selling it directly to the end customer, since in both cases the customer is involved in the choice of the chassis and the price would, in principle, be the same[19]. Chassis sales to end customers should therefore not be accounted for as sales of the chassis manufacturer on the bus markets[20], but as sales on an overall chassis market (encompassing sales to body builders and end customers). Scania argues even that such a chassis market should further comprise the sale of finished buses and coaches by bus manufacturers to end customers in situations where the body work was performed by an external body builder (Option 2). In Scania's view, this type of transaction would, from a supply-side perspective, be similar to a direct sale of a chassis to the end customer by the bus manufacturer (under the two invoice system, Option 4). According to Scania, customers in this type of transaction would choose the bus manufacturer mainly for its

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18 Option 4 ("two-invoice system") is not common outside the Iberian Peninsula.

19 MAN further argued that direct invoicing to the end customer would also be a means for body builders to avoid pre-financing of the chassis and warranty claims relating to the chassis.

20 As will be explained in more detail below, registration based market statistics commonly used in the industry, however, regularly show chassis sales as part of the "market share" of the bus manufacturer.

chassis and request that a specific body builder is used for building the complete bus or coach[21].

(ii) Allocation of chassis sales directly to end customers (Option 4)

34. The Commission's market investigation has confirmed that *end customers* view all four options to buy a bus or coach as largely interchangeable. From their perspective, both in Options 3 and 4 the chassis is delivered as an upstream product to the body builder of their choice, from whom they demand the delivery of an *entire bus*, that is to say a fully assembled end-product. While it is true that the chassis is for customers a key component and that many customers specify the chassis they want or even pay for it directly, the market conditions on the level of chassis sales to body builders are in many cases different from sales to end customers. In fact, body builders under Option 3 often source chassis under framework supply arrangements. For them, considerations like how a chassis can be assembled efficiently or how they can achieve economies of scale (e.g. by buying larger volumes of the type and brand of chassis ultimately demanded by customers) appear to play a key role. By contrast, end customers focus on quality, efficiency and reliability of the end-product (including the chassis) and the after-sales services. The mere fact that in certain national markets a significant group of customers pays the chassis separately does therefore not mean that "chassis sales" to these customers belong to the same market as the chassis supply to body builders.

35. Ultimately, the question whether chassis sales to end customers under Option 4 should be added to the upstream chassis supply market can however be left open for the purposes of the present decision. As set out below, the transaction does not lead to a significant impediment of effective competition regardless of whether one might consider chassis sales to end customers (i) as part of the chassis supply market, (ii) as part of the end customer markets for buses / coaches[22] or (iii) as a separate product market for chassis sold to end customers (the narrowest market definition). In its analysis, the Commission made sure that buses which were assembled by two different suppliers (body and chassis supplier) are not counted twice in the sales statistics on the bus and coach markets (see in detail below, VIII C 1).

(iii) Allocation of sales in the sub-contracting scenario (Option 2)

36. During the Commission's market investigation, Scania's premise that, in the sub-contracting scenario (Option 2), customers usually request the bus manufacturer to sub-contract the services of a specific body builder was not confirmed as a general rule[23]. In

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21 In this respect, sub-contracting in the bus and coach industry would, according to Scania, differ significantly from sub-contracting arrangements in other industries. Scania further contended that it was merely for convenience reasons that an end customer, who wishes to purchase two different components (chassis and body) from specific suppliers, approaches only one of these two suppliers.

22 It might indeed be arguable that (some) chassis sales to end customers belong to the end customer *bus* and *coach* markets, since chassis are often the key part of a bus for customers and buses are often allocated, in the official registration, to the respective chassis manufacturer. This fact will be taken into account in the competitive analysis of the various bus and coach markets in the present decision.

23 One manufacturer pointed out that its customers can only choose from a limited range of body builders which the bus manufacturer pre-selected, see reply to question 2 of the Second Questionnaire to bus manufacturers. The Commission also notes that, with respect to coaches, Scania itself mainly sells its coaches built-up by Scania's co-operation partner, the Spanish body building company Irizar.

principle, therefore, the fact that the chassis of a bus happens to be made by a specialised chassis manufacturer who procures the body building from another supplier does not reduce this sale of a complete bus (i.e. Option 2) to a mere "chassis sale". Under Option 2, in fact, customers buy buses, not chassis. After all, it is the chassis manufacturer who can set the price and other terms and conditions for the complete bus or coach and who bears the financial risk of the entire transaction. Excluding sales under Option 2 from the end-customer market for buses and coaches and allocating them to the chassis market would therefore not reflect the competitive dynamics of the bus and coaches markets.

(iv) No further sub-segmentation of the chassis market

37. The Commission finally considered whether a market for the supply of chassis should be further sub-divided along the lines of certain technical characteristics of various types of chassis (e.g., differentiating between conventional ladder frame chassis, low-floor monocoque frame and semi-monocoque chassis). On the demand side, there is some but not full substitutability between such different types of chassis, because certain types of chassis are particularly suited to specific end uses (for instance, low floor city buses are often built on a monocoque chassis). On the supply side, substitutability is higher. Almost all major chassis manufacturers are currently producing and supplying a range of chassis types with different technical characteristics and the manufacturers compete against each other across the segments. Moreover, all major chassis manufacturers indicated that they could increase very substantially their production of the various types of chassis within a short time-frame (6 to 12 months). For the purposes of the present decision, the question of a possible sub-segmentation of the market for the supply of chassis can, however, be left open as even on the basis of such a sub-segmentation, the transaction would not lead to a significant impediment of effective competition.

3) Diesel Engines

38. Both MAN and Scania manufacture and sell diesel-engines for different applications and in different power ranges.

39. In Case COMP/M.1094 *Caterpillar/Perkins Engines*[24] the products were segmented according to the end use of different engines: (i.) industrial (construction, agricultural, material handling, earth-moving equipment), (ii.) on-highway trucks (light, medium and heavy duty trucks and other commercial vehicles), (iii.) so-called “GenSets” (stand-alone electricity generators powered by diesel engines) and (iv.) marine applications (ships). At the time, the Commission did not exclude that each category could be sub-divided further according to engine output capacity. In the notification, MAN has adhered to the market definitions made by the Commission in the above-mentioned case.

40. The market investigation has confirmed the delineation into the four categories above. The question whether or not the product markets need to be sub-divided further according to output capacity may in this case be left open since the assessment of the case would remain unchanged.

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24 Commission decision of 23.02.1998

B. RELEVANT GEOGRAPHIC MARKETS

1) Heavy Trucks

41. The Notifying Party submits that the market conditions which were assessed by the Commission in the *Volvo/Scania* case and in the *Volvo/Renault* case have significantly changed within the last five years. In particular, the criteria on which the Commission based its market definition in *Volvo/Scania* (price level differences, customers preferences, technical requirements, suppliers' location, the configurations of distribution and service network and large market share variations) would not justify separate national markets anymore but rather militate for an EEA-wide market or at least for regional markets such as a "Central European" market which would in particular consist of Germany and Austria.

42. The Notifying Party claims that the price conditions are uniform throughout Europe, since the rebate structure is very similar in the entire EEA, even if the price may be determined on the rebates offered by the respective manufacturer. More specifically, in MAN's view the market conditions in Central European countries are very similar. In particular, MAN considers that the price levels between Germany and Austria do not vary significantly (differences around [0-5%]); also customer preferences and technical requirements are similar. It furthermore claims that all main manufacturers are well established in those countries.

43. The market investigation has shown that there are indeed some indications that might speak in favour of an EEA-wide or regional markets, in particular as regards increasingly homogenous technical requirements and customer preferences. This is especially true for countries such as Germany and Austria. However, the market investigation revealed also that there are still a number of factors which militate rather for national markets: For example, there are still some technical requirements that are specific in several Member States (e.g. in the UK and in the Nordic countries); there are still important differences in terms of price and rebates between different countries (depending on different equipment demands, volumes, brand presence and perception); there is still a preference for local suppliers (market shares variation in single national territories are still relevant) and the purchasing is mainly still done on a national basis.

44. In this case, however, the geographic scope of the market for heavy trucks can be left open as the merger would not raise competitive concerns irrespective of the market being defined as EEA-wide, regional or national.

2) Military Trucks

45. For military trucks, MAN considers the relevant geographic markets still to be *national* in scope. In this respect, the Notifying Party refers to the Commission's decision practice in several cases concerning military products. In these cases (e.g. Case No. COMP/M.1745 – EADS[25]; more recently: Case No. COMP/M.4288 – Saab/EMW[26]), the Commission has regularly defined the relevant markets as national in scope for those Member States where domestic producers are active. Based on these arguments MAN submits that all the

[25] Commission decision of 11.05.2000

[26] Commission decision of 31.08.2006

markets where MAN (Germany, Austria, Denmark, Poland, UK) and Scania (Sweden, Norway, Finland, Netherlands) are currently active in the sale of military trucks are national in scope.

46. The market investigation has shown that public procurement offices still have a preference for local manufacturers, especially in countries like France, Germany, Italy, Netherlands, Spain and Sweden. Established local production and a local service network of the domestic producer are favoured because they allow national governments to keep the control over the production in case of a military crisis. The fact that public procurement offices demand "local content" in their calls for tenders and select bidders on the basis of confidentiality and security of supply considerations, indirectly favours local suppliers.

47. Based on these elements, the Commission considers the markets for military trucks to be national in scope.

3) Buses, Coaches and Chassis

(a) City and Inter-city buses

48. For *city buses and inter-city buses* MAN is of the opinion that the EEA as a whole – but at least Central Europe (comprising Benelux, Germany, Austria, France, Spain, Portugal, Italy) – form a single relevant geographic market. In this regard, the Notifying Party mainly refers to the fact that most of the city and inter-city buses in these countries are purchased via public tenders on a European-wide basis. MAN in addition points to the fact that the technical certification standards for city and inter-city buses have become more and more homogeneous across the EEA.

49. The Commission in several previous cases inquired into the geographical scope of the markets for city and inter-city buses. In Case IV/M.477 – *Mercedes-Benz / Kässbohrer,*[27] national markets were assumed, with the question of whether Germany and Austria formed a single geographic market being left open. In Case COMP/M.1672 – *Volvo/Scania,*[28] the Commission considered that Ireland and each of the Nordic countries (Sweden, Finland, Norway and Denmark) formed separate geographic markets for city and inter-city buses; for the rest of the EEA the precise definition of the relevant geographic markets was left open. In its last decision concerning the markets for city and inter-city buses (Case No. COMP/M.2201–*MAN / Auwärter*), the Commission – whilst leaving open the precise geographic scope of the relevant markets in those regions of the EEA which were not affected by the respective transaction – based its final conclusions on the definition of national markets[29].

50. The market investigation in the present case on the one hand confirmed that – with technical differences due to different climatic conditions and preferences of the final customer still existing – the technical and quality standards for city and inter-city buses

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27 Commission Decision of 14 February 1995, Case IV/M.477 – *Mercedes-Benz / Kässbohrer*, paragraph 39

28 Commission Decision of 14 March 2000, Case COMP/M.1672 – *Volvo/Scania,* paragraphs 248 and 259; confirmed by the Commission Decision of 1 September 2000 in Case COMP/M.1980 – *Volvo / Renault*, paragraph 28.

29 Commission Decision of 20 June 2001, Case No. COMP/M.2201–*MAN / Auwärter,* paragraph 21.

are largely uniform across the EEA. The results of the market investigation, however, on the other hand also provide some indications that the market conditions across the EEA are still not sufficiently homogeneous to consider the markets for city and inter-city buses to be EEA-wide in scope.

51. As regards the demand-side structure, in several countries municipality-owned service providers still dominate (e.g. Germany, Austria, France) whereas other countries are characterized by the activity of private companies (e.g. UK, Ireland), which affects inter alia the way buses are procured. Other factors may also lead to different procurement patterns. In some countries (e.g. Germany, Austria, Sweden, and Hungary) public or private tenders predominate in other countries (e.g. Spain, Portugal) bilateral negotiations between customers and suppliers still dominate. It should also be noted that the market shares of the different players are still very asymmetric across countries.

52. The definition of the relevant geographic markets for city and inter-city buses, however, can be left open in the present case, since the merger will not lead to a significant impediment of effective competition in any possible definition of the relevant geographic market.

(b) Coaches

53. MAN submits that the geographic market for coaches is EEA-wide in scope, mainly because of similar pricing and rebate conditions, the existence of EEA-wide distribution and service networks, similar technical specifications within the EEA and the existence of EEA-wide general warranty conditions and maintenance ranges. Scania, in contrast, considers that the geographic markets for coaches are national in scope. In support of its view, Scania points to different prices, different customer preferences and purchasing habits, different national technical requirements and significant market share fluctuations between the countries within the EEA.

54. In a previous decision concerning coaches[30], the Commission found that the geographic markets were national in scope. In more recent decisions[31] the Commission considered specific national markets such as Finland and the United Kingdom as distinct geographic markets for coaches while leaving open the precise geographic delineation for the remaining countries within the EEA. In *MAN/Auwärter*[32], the Commission, despite assessing the concentration on the basis of national geographic markets, found indications that "the relevant market may be starting to extend beyond national frontiers".

55. The Commission's market investigation in the present case, on the one hand, confirmed a trend towards wider geographic markets for coaches (certain manufacturers apply a single

30 See case No. IV/M.477 - *Mercedes-Benz/Kässbohrer*, Commission decision of 14.02.95.

31 See case No. COMP/M. 1672 – *Volvo/Scania*, (Commission decision of 10.03.00); COMP/M. 1980 – *Volvo/Renault V.I.* (Commission decision of 01.09.00).

32 COMP/M.2201, *MAN/Auwärter,* Commission decision of 20.06.01.

recommended price list across the EEA and several technical and regulatory requirements are similar across the EEA)[33].

56. The Commission, on the other hand, found also some indications that markets are still national in scope. The market shares of the major competitors vary significantly between countries within the EEA. For instance, MAN/Scania would have combined market shares (based on registration figures) ranging from 61.5% in Ireland and 53.8% in the United Kingdom to 14.1% in France and 12.8% in the Netherlands. Customers and competitors also indicated that significant price differences still exist. And specific technical requirements still exist in within the EEA. For example, in Denmark coaches have to provide for an extra emergency exit. Finally, the market investigation revealed differences in purchasing patterns (e.g. in Spain and Portugal, many customers prefer to buy the chassis and the body of the coach separately).

57. The geographic market definition can nevertheless be left open in this case since the concentration would not lead to a significant impediment of effective competition on the market(s) for coaches irrespective of the exact delineation of the relevant geographic market.

(c) Chassis

58. MAN considers the product market for the supply of chassis to be world-wide or at least EEA-wide in scope. According to MAN, this is mainly due to low transportation costs and the fact that industry-to-industry transactions are concerned. The market investigation confirmed that many purchasers of chassis (body builders) indeed source them across the EEA. Many customers of chassis who currently purchase only from one or few suppliers stated that they could relatively easily switch to other European suppliers of chassis. It was also confirmed that transportation costs do not play any important role. The Commission therefore assessed the market for the supply of chassis to body builders on an EEA-wide basis.

59. If chassis sales directly to end-customers (under the "two invoice system") were to be considered separately as the narrowest product market, it cannot be totally excluded, for reasons similar to those outlined in the context of the markets for complete buses and coaches above, that the relevant geographic scope would be regional or national. Therefore, the Commission also assessed a possible distinct market for direct chassis sales to end customers on a national basis for the two countries primarily concerned, namely Spain and Portugal.

3) Diesel Engines

60. The market investigation has confirmed that the competitive conditions for diesel engines are similar throughout the EEA[34]. The Commission therefore concludes that the geographic scope of diesel engine markets is at least EEA-wide.

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33 See the replies to Questionnaire to customers of coaches, Questions 7 to 14 and the replies to the First Questionnaire to competitors on buses and chassis, Questions 25 to 34.

34 One circumstance supporting this market definition is the similarity of price levels. According to MAN, prices for marine diesel engines vary less than [0-10%] between countries within the EEA.

VIII. COMPETITIVE ASSESSMENT

A. TRUCKS

1) Heavy trucks – non-coordinated effects

(a) The EEA

61. The heavy truck market in Europe is characterised by the presence of six main producers, Volvo, DaimlerChrysler ("DC"), MAN, DAF, Scania and Iveco. All main players are active throughout Europe, while being stronger in their respective domestic market. MAN sales are focused on Central Europe (in Austria with a market share of 44.4% and in Germany with a market share of 28.4%) while Scania is traditionally strong in Northern Europe (in Sweden with a market share of 45.5%, Norway with a market share of 35.1% and Finland with a market share of 32.5%).

62. Following the merger, the number of main players will be reduced from six to five. With a market share of roughly 29% the merged entity would become the market leader for heavy trucks at an EEA-level, followed by Volvo/Renault ("Volvo") and DC reaching market shares of 25% and 20% respectively. At a national level, the proposed transaction would lead to high combined market shares in Austria (56%) and the Nordic countries (Iceland: 55,4%, Sweden: 47,5%, Norway: 46,1%, Denmark: 43,3%, and Finland: 38,4%). Market shares between 25% and 35% would be reached in the following countries: the UK, Ireland, the Netherlands, Poland, Greece, Czech Republic, Estonia, Slovakia, Slovenia, and Hungary. The Commission's market investigation focused on the impact of the proposed transaction in the Member States where, assuming that they constitute relevant geographic markets, market shares would be high for the merged entity.

Market Structure Heavy Trucks (%, 2005)

Country	MAN	Scania	Comb.	DC	Volvo	DAF	Iveco
EEA	15,8	12,9	**28,7**	20,1	25,1	14,0	10,7
Austria	44,4	11,9	**56,3**	15,6	13,4	9,4	5,3
Germany	28,4	7,5	**36,0**	39,6	9,4	8,3	6,5
Denmark	16,8	26,5	**43,3**	12,2	28,0	11,7	4,7
Finland	6,0	32,5	**38,4**	12,1	34,7	0,2	2,8
Sweden	2,0	45,5	**47,5**	5,0	46,1	1,2	0,1
Iceland	26,0	29,4	**55,4**	12,1	18,3	2,4	5,9
Norway	11,0	35,1	**46,1**	11,8	36,6	4,5	0,7

(b) Austria

63. In the Austrian market, the new merged entity will be the market leader with 56% market share, followed by DC (15.6%), Volvo/Renault (13.4%), DAF (9.4%) and Iveco (5.3%). The market investigation has shown that, despite the high market share of the merged entity, it will continue facing competition from the other players, notably of the current number two in the Austrian market, DC, but also from Volvo/Renault, DAF and Iveco. None of MAN/Scania's competitors currently faces any capacity constraints which might prevent them from expanding their sales in Austria.

64. All these players have been present in the Austrian market for a long time and are able to serve the market with a well-established repair and service network. Indeed, according to third parties, an established service network is seen as the main barrier to entry/expansion in the market. The table below shows that all five players have a relatively strong presence with service points in Austria:

Austria	MAN	Scania	DC	DAF	Volvo/Renault	Iveco
Service	13	17	44	15	35	54

65. In particular DC, but also Volvo/Renault and even the currently smallest supplier, Iveco, will have a larger service and distribution network than the merged entity.

66. With regard to the Austrian market (as well as for the other affected truck markets), the Notifying Party stressed that the merging entities are not each other's closest substitutes. The Commission has analysed the closeness of substitution between MAN and Scania in its market investigation on the basis of the main customers' purchase criteria, such as brand reputation; quality and reliability; purchase price; maintenance costs; residual value; total life cycle cost; fuel consumption; technical features; equipment; level comfort/luxury; existence/density of local service network; proximity of production facility of supplier). The results of the market investigation clearly show that MAN and Scania are not regarded as each other's closest substitutes. On the contrary, customers rather see the second German supplier, DC, as the first substitute of MAN[35].

67. In line with these findings, the vast majority of costumers asked in the market investigation remarked that the transaction would not raise any competition concerns for the Austrian market. Some competitors even expect that competition might even increase in certain segments due to a more competitive product and cost structure of MAN/Scania.

68. On the basis of all the above elements the Commission considers that the notified operation does not raise competition concerns should the market for heavy trucks in Austria be considered a separate market.

(c) Germany

69. In Germany the new merged entity would become the second player with a market share of around 36%, following the market leader DC with 39%. Scania was only the fourth

[35] It may be noted that the target company, Scania, contests MAN's view and argues that if customers were segmented by applications (for example heavy trucks with very strong engines of at least 500 hp used for heavy construction, heavy trucks with very strong engines at least 500 hp for extra heavy haulage applications, heavy trucks used for construction, heavy trucks used for haulage or heavy trucks used for distribution), Scania and MAN would appear as close substitutes. However, first of all, for the reasons explained in the market definition section, the market investigation showed that different types of commercial heavy trucks do not constitute separate product markets. Secondly, even if the Commission would consider the positions of the market players in each of these segments, the two merging parties would not appear as closest competitors in Austria in these segments, in which DC (not Scania) is clearly perceived as closest competitor to MAN. Even if MAN and Scania may have more parallel market shares in the relatively small segment of heavy trucks with very strong engines of at least 500 hp used for heavy construction, customers and other competiors did not support the thesis that Scania is MAN's closest competitor.

player before the merger, with a market share of 7.5%. In addition Volvo, DAF and Iveco are all present in Germany with market shares respectively of 9.4%, 8.3% and 6.5%.

70. As the table below shows, all the competitors possess a well-developed service and repair network in Germany:

Germany	MAN	Scania	DC	DAF	Volvo/Renault	Iveco
Service	369	111	533	151	214	52

71. Furthermore, the market investigation confirmed that competition in the German market is considered by market players to be strong, not only between the two market leaders DC and MAN, but also between all five leading suppliers. According to the results of the market investigation, German customers consider cost criteria such as purchase price, maintenance cost and total life cycle cost as their main purchase criteria. The fact that many of the big fleet operators are multi-sourcing their trucks from at least two suppliers can be expected to further constrain the merging parties ability to raise prices post-merger. It should also be stressed that none of MAN/Scania's competitors currently faces any capacity constraints which might prevent them from expanding their sales in Germany if customers should want to change their supplier.

72. Moreover, the market investigation has also confirmed that from the customers' point of view, MAN and Scania are not the closest substitutes in the German market, where the two traditional domestic suppliers, MAN and DC, are clearly seen as each others closest competitors in terms of quality, technology and price. Accordingly, customers replying to the Commission's market investigation do not expect a price increase or any other anti-competitive effect in the German market.

73. In the light of the above, the Commission concludes that the proposed transaction would not give rise to any non-coordinated anti-competitive effects in the Germany, should this be considered a separate market.

(d) The Nordic countries

74. In the Nordic countries the new entity would be the first player in the heavy truck market with relatively high market shares.

Country	**MAN**	**Scania**	**Comb.**	**DC**	**Volvo**	**DAF**	**Iveco**
Sweden	2.0	45.5	**47.5**	5.0	46.1	1.2	0.1

75. With respect to *Sweden* the small overlap of the two merging parties (2%) would not substantially change the competitive structure of the market.

76. Moreover, the merged entity would still face significant competition from Volvo, the domestic market leader pre-merger.

Country	**MAN**	**Scania**	**Comb.**	**DC**	**Volvo**	**DAF**	**Iveco**
Finland	6.0	32.5	**38.4**	12.1	34.7	0.2	2.8

77. In *Finland*, the proposed transaction will result in an overlap of 6%, but the new entity would still face strong competition especially from Volvo (34.7%) and DC (12.1%). Moreover, the market investigation has clearly shown that the customers do not view MAN and Scania as the closest substitutes. The market investigation also shows that customers do not believe that the transaction would have any anticompetitive impact on the market.

Country	MAN	Scania	Comb.	DC	Volvo	DAF	Iveco
Norway	11.0	35.1	**46.1**	11.8	36.6	4.5	0.7

78. In *Norway*, the situation is similar to Finland: after the merger the new entity will still face strong competition from the other market players and especially from Volvo (36.6%) and DC (11.8%).

79. The market investigation for Norway also confirmed that MAN and Scania are not seen as the closest substitutes. MAN customers would rather switch to DC instead of Scania in case of a price increase. According to the market investigation customers consider price, maintenance cost, and total life cycle cost as their main purchase criteria. In this regard, some customers have clearly stated that there is such a "*strong price competition*" in the market that the proposed merger would not have any significantly impact on the competitive structure of the market.

Country	MAN	Scania	Comb.	DC	Volvo	DAF	Iveco
Denmark	16.8	26.5	**43.3**	12.2	28.0	11.7	4.7

80. In the *Danish* market, after the merger there will still be competitive pressure from the other market players (Volvo 28%; DC 12%, DAF 11.7% and Iveco 4.7%), none of them facing capacity constraints which would prevent them from expanding their Danish business.

81. Regarding the strength of the competitive pressure from MAN and Scania it can be noted that MAN and Scania have not been able to gain market shares during the last three years. On the contrary, the combined shared even decreased slightly in 2005. At the same time, DC and DAF could increase their market shares significantly. In addition, as the table below shows, competitors also in Denmark are present with a repair-service network strong enough to expand their position in the market:

DK	MAN	Scania	DC	DAF	Volvo/Renault	Iveco
Service	20	30	11	19	29	29

82. The market investigation confirmed that customers do not see MAN and Scania as the two closest alternatives in the Danish heavy truck market; they indicate that there are still three other larger and one smaller supplier (Iveco) to replace the merged entity. In addition, the Commission also took into account that the customer structure in Denmark is characterised by the presence of a number of big truck fleet operators who are particularly price sensitive and who indicated that they could easily switch to another supplier in case of a price increase.

Country	MAN	Scania	Comb.	DC	Volvo	DAF	Iveco
Iceland	26,0	29,4	**55,4**	12,1	18,3	2,4	5,9

83. The Commission particularly looked at the market situation in *Iceland*, where the new entity would have a combined market share of 55.4% after the merger.

84. Despite this high market share, at least two other major truck manufacturers, such as Volvo with 18.3% and DC 12.1%, would be well-placed in the small Icelandic market to exercise competitive pressure on the merged entity and to respond to any increased demand from their customers. Based on the sales trend figures, Iveco seems also to have been increasing its market position and DAF has entered the market (they sold 9 trucks in 2006). The presence of independent multi-brand importers will also reinforce intra-brand competition in Iceland.

85. In addition, with regard to the distribution network, on the basis of the information gathered from the market investigation, it seems that all truck manufacturers have their service repair shop and their own dealer or official importer.[36]

86. The Commission's market investigation also established that the majority of customers in Iceland apply a multi-sourcing strategy, having trucks from different manufacturers in their fleets; customers explained to the Commission that their most important purchase criterion is the price and that they are ready and able to switch to other manufacturers in the case the new entity would raise the price. In fact, all major suppliers such as Scania, Volvo, MAN and Mercedes are present in the Icelandic market through dealers, official importers and an established after-sales service network; none of the customers replying to the market test considers Scania as the best alternative to MAN trucks and vice versa. It should also be noted that no Icelandic customer has raised a concern about the transaction in the Commission's market investigation. On the contrary, some customers explicitly stated competition is fierce in the Icelandic heavy truck market. Despite the relatively high market share of the merged entity in the small Icelandic market (208 heavy trucks sold in 2005), the transaction will therefore not have an anti-competitive impact in Iceland.

87. On the basis of all the above elements the Commission considers that the notified operation does not raise competition concerns in the market for heavy truck in Sweden, Finland, Norway, Denmark and Iceland.

(e) Other markets

88. Based on a national geographic definition of the heavy truck market, the proposed transaction would also lead to affected markets in the following countries: the UK, Ireland, the Netherlands, Belgium, Luxemburg, Poland, Greece, Czech Republic, Estonia, Slovakia, Slovenia, and Hungary.

[36] It should also be noted that when comparing the registration figures for Iceland with MAN's actual sales figures gathered during the market investigation, it turns out the registration data submitted by MAN somewhat overstate the merged entity's position on the Icelandic market.

Country	MAN	Scania	Comb.	DC	Volvo	DAF	Iveco
UK	9.1	15.9	**25.0**	16.5	20.7	26.7	5.9
Ireland	6.1	24.4	**30.5**	6.6	25.0	17.4	4.9
Netherland	10.7	19.1	**29.8**	11.7	20.8	33.4	2.5
Belgium	17.6	13.7	**31.3**	14.3	27.4	20.7	6.3
Luxemburg	15.4	17.8	**33.3**	21.2	25.7	14.0	5.9
Poland	22.4	12.9	**35.3**	11.4	29.9	18.0	5.5
Greece	19.4	10.1	**29.5**	33.6	27.5	4.1	5.0
Czech Republic	161	14.1	**30.2**	21.8	22.6	13.2	6.9
Estonia	12.5	22.5	**35.0**	37.2	20.0	1.5	1.9
Slovakia	11.8	18.7	**30.5**	18.8	27.0	8.1	13.1
Slovenia	23.1	11.6	**34.8**	27.6	19.7	4.8	12.8
Hungary	15.9	12.2	**28.1**	15.4	32.6	14.5	9.4

89. With regard to the **UK** the new entity will be the second player of the market with a moderate market share of only 25%, following DAF with a market share of 26.7%. Besides DAF, other strong players are present in the market: Volvo 20.7%; DC 16.5% and Iveco 5.9%. In **Ireland**, the new entity will be the market leader with a slightly stronger market position of 30.5%. In any case, the impact of the transaction would not have any significant effect on competition, since strong competitors will still remain present in the market (Volvo25%; DAF 17.4%; DC 6.6%; Iveco 4.9%). The market investigation carried out by the Commission both in the UK and in Ireland, confirmed that costumers do not consider MAN and Scania being the closest substitutes, and customers did not raise any concerns with regard to the proposed transaction.

90. In **Belgium** the new entity will reach a market share of 31%, becoming the leader of the market. However, customers in the Belgium market can still rely on the presence of other almost equally strong competitors: DAF 20.7%; Volvo 27.4%; DC 14.3%; Iveco 6.3%. In **Netherland**, the new entity will be the second player of the market with a market share of 29.8%, following the historical domestic truck manufacturer, DAF (33.4%). Besides DAF, in the Dutch market, there will be still present other competitors as Volvo (20.8%), DC (11.7%) and Iveco (5.5%). In **Luxemburg,** the new entity will reach a market share of 33.3%. However it will still face other strong market players' competition: DC (21.2%), Volvo (25.7%), DAF (14%) and Iveco (5.9%). In all the three above mentioned markets, the market investigation confirmed that MAN and Scania are not considered by the customers as the closest substitutes and that they do not expect any negative impact of the proposed transaction on the competitive structure of the heavy truck markets in Belgium, in the Netherlands and in Luxemburg.

91. With regard to **Slovakia** and **Slovenia**, the new entity will reach market shares respectively of 30.5% and 34.8%. However, competition in these markets will not be impeded, due to the presence of other strong competitors (Slovakia: Volvo 27%; DC 18.8%; DAF 8.1% and Iveco 13.1%. Slovenia: DC 27.6%; Volvo 19.7%; Iveco 12.8 and DAF 4.8%). In addition, no concerns were raised by customers on the impact of the transaction in these countries.

92. In **Estonia**, **Greece**, **Poland**, **Czech Republic** and **Hungary**, the new entity will hold market shares (between 28.1% and 35.3%), and will still face competition from equally strong competitors.

93. On the basis of the foregoing, the Commission considers that the notified operation will not raise any competition concerns in the market for heavy trucks.

2. Heavy trucks – potential co-ordinated effects

94. A number of national markets for heavy trucks must be regarded as highly concentrated with two to four main suppliers accounting for very large portions of total sales in these markets. Therefore, the Commission has assessed whether there are indications that the leading market players might have tacitly co-ordinated their behaviour in the past or whether the merger might increase the risk of co-ordination between the oligopolistic suppliers in the national markets for the provision of heavy trucks.

95. The Commission's market investigation has not provided any indications that collusive behaviour has occurred in the past. On the contrary, most respondents are of the opinion that the large manufacturers of heavy trucks have competed intensively with each other pre-merger. Although a number of respondents have voiced general concerns that a reduction from six to five major truck-makers in the EU might reduce competition to a certain extent, none of the respondents has raised any specific concern regarding tacit co-ordination between the remaining manufacturers.

96. The lack of concerns of customers is in line with the Commission's analysis of the characteristics of the European markets for the provision of heavy trucks. The Commission has evaluated the following criteria:

(i.) Market structure: Looking at the nine states within the EEA where MAN/Scania would have achieved a combined market share of more than 35% in 2005[37], the following observations may be made. The five large European truck-makers are present in all nine markets (albeit with negligible market shares for certain operators in certain countries[38]) with typically asymmetrical market shares. In most of these markets[39], co-ordinated behaviour would require parallel behaviour by at least 3 or even 5 firms, which makes it difficult to sustain a coordinated strategy over time. In three countries, the market shares would be concentrated mainly on the two largest firms with relatively symmetrical market shares. In **Germany,** MAN/Scania (36%) and DC (39.6%) would have a combined market share of 75.6%; in **Sweden** the combined entity (47.5%) and Volvo (46.1%) would obtain a combined market share of 93.6%[40]; in **Norway**, MAN/Scania (46.1%) and Volvo (36.6%) would account for 82.7% of the total sales. However, the existence of three remaining competitors in Germany with non-negligible market shares (varying between 9.4% and 6.5%), one competitor in Sweden share (5%) and two competitors in Norway with not insignificant market shares (11.8% and 4.5% respectively) as well as the fact that these "fringe firms" are all major, trans-national firms fully capable of responding to potential collusive behaviour from the leading market players, makes it unlikely that a co-ordinated strategy could be upheld over a long time in these markets.

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[37] Austria, Denmark, Estonia, Finland, Germany, Iceland, Norway, Poland and Sweden

[38] Such as Iveco's 0.1% share in Sweden and DAF's 0.2% share in Finland.

[39] Austria, Poland, Denmark, Iceland, Norway and Estonia

[40] It should also be pointed out in this respect that the overlap in Sweden is very small (2%).

(ii.) Product characteristics: Heavy trucks are technically complex products which come in a large number of varieties. Order sizes vary heavily from the sale of single vehicles to large fleets of several hundred vehicles sold at the same time to one buyer. For larger orders, certain product features are custom-made for individual clients. Moreover, after-sales agreements on service, warranties etc may vary from customer to customer. A very large number of parameters thus determine each sale of heavy trucks, a fact which renders tacit co-ordination difficult. The heterogeneity of the product makes the occurrence of co-ordinated effects even more unlikely. It should also be noted that orders are not homogeneous and stable, but vary over time. In particular in the Nordic countries, it might be unattractive for each supplier to miss an important large order from an important fleet customer due to a co-ordinated strategy.

(iii.) Lack of market transparency: The heterogeneity of the products makes the markets for heavy trucks also less transparent, since the difficulty of price comparisons increases with the number of product parameters. Moreover, the market investigation has shown that individually negotiated rebates are common, a fact which further decreases price transparency. The general lack of market transparency makes it difficult to detect firms which deviate from a possible co-ordinated behaviour and the difficulty in detecting deviation makes it more difficult for the other co-ordinating firms to retaliate.

(iv.) No structural links: The market investigation has not indicated the existence of any structural links between the six major European manufacturers of heavy trucks; they are all vertically integrated manufacturers of their respective products.[41]

(v.) Assymetric market structure in Europe: The market structure varies heavily across the EEA with firms being stronger in their "home" regions (e.g. Scania and Volvo in the Nordic countries, MAN and DC in Germany, etc.). This asymmetric structure makes it possible for companies that are not involved in the co-ordination in one market to exert countervailing market power against the participants in the tacit collusion in other markets, where the former have a stronger market position and the latter are weaker. These asymmetries between national markets within the EEA make co-ordinated effects in one national market unlikely to be sustainable over time.

97. On the basis of the analysis above, the Commission concludes that the markets for the provision of heavy trucks within the EEA are not susceptible to co-ordinated effects.

3. Military trucks

98. The military truck business has some very peculiar characteristics, mainly because national procurement offices favour local truck manufacturers in their respective countries (see above, paragraphs 23-25). The market investigation has confirmed that MAN and Scania are primarily focused on different national markets. In particular, MAN participated in public tenders mainly in Central European countries, while Scania participated in tenders for defence applications mainly in the Nordic countries, in the Netherlands, in France and in Greece. The only tender in that both MAN and Scania participated, was the UK tender for a "Future Cargo Vehicle (FCV)" in 2001. However, this procedure was ultimately cancelled. Consequently, as MAN and Scania did not compete in the same countries in the past, there are no actual horizontal overlaps between

41 However, truck makers are likely to source certain components from the same suppliers.

their activities. It is not to be expected that this situation will significantly change in the near future. Even if narrower markets for on-road and off-road military trucks were to be defined, no competition concerns would occur on these markets.

99. On the basis of the above elements, the Commission considers that the proposed transaction would not raise any competitive concerns in the market for military trucks.

4. Overall conclusion for trucks

100. Based on the above, the Commission considers that the proposed transaction does not raise competition concerns on the market for trucks and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

C. BUSES, COACHES AND CHASSIS

1) Introduction: methodology of market share calculation

101. The Notifying Party – in line with the methodology applied in previous cases[42] – submitted market share data for the different national bus markets based on national registration data. Insofar as registration figures were not available, the notifying party submitted estimates on the sales of the different suppliers in the respective Member States of the EEA.

102. The Commission's market investigation, which included the reconstruction of the markets based on the suppliers' *sales* figures for the years 2003 to 2005, reveals on the one hand that the registration data submitted by MAN in general provide a sound basis for the respective national market volumes. As regards the market position of the market players, however, registration data may not provide a reliable picture in all countries.

103. The registration of buses refers to a specific number put on the chassis of a bus. Accordingly, all buses are registered under the name of the chassis manufacturer, even if the final bus is manufactured and sold by bus manufacturers ("body builders") that do not produce entire buses themselves but purchase the chassis from other bus manufacturers, build the body of the bus and sell the finished bus to the final customer. The distorting effect of registration data is most relevant in those Member States where body builders hold a significant market position.

104. The Commission's market investigation shows that in particular the market for coaches is characterized by the presence of a significant number of body builders. To a much lesser extent than for coaches, body builders are also active in some markets for city buses and inter-city buses. Based on these elements, the Commission conducted an alternative analysis of the market structure based on (i) registration data and (ii) sales figures reported by the suppliers.

105. As regards the structure of the markets for city and inter-city buses, the Commission in addition took into account another methodological issue. Annual market share data do not provide an adequate picture of the market position of a specific supplier since the markets

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42 See e.g. Commission Decision of 20 June 2001, Case No. COMP/M.2201–*MAN / Auwärter,* paragraph 24, Table 1.

for city and inter-city buses are characterised by volatile and unpredictable demand ("lumpy" orders)[43] with very large volumes ordered at the same time. Consequently, the market position of one company may change substantially depending on the particular contracts awarded during one year. The Commission therefore considers that the market structure based on cumulated sales in the 3 years period 2003-2005 provides a more reliable picture of the competitive situation in the markets for city and inter-city buses.

2) City buses

(a) Market structure at EEA level and affected national markets

106. Based on registration figures submitted by MAN in the form CO, for the year 2005 the merged entity at the EEA level with a market share of 20.7% would catch up with Iveco (22.9%) and Daimler Chrysler (21.1%). For the time period 2003-2005 the market shares of the leading players are quite similar (MAN/Scania: 22.4%; Iveco: 21.2%; DaimlerChrysler: 20.5%). Besides Volvo (2005: 6.8%; 2003-05: 6.1%), several smaller suppliers are active in the market for city buses in the EEA, mostly body builders (e.g. Solaris, Van Hool) that do not produce buses in their integral form but purchase chassis from other bus manufacturers and build up only the body of the bus but selling the finished product (bus) on their own account to the final customer. These suppliers all together hold roughly 30% of the market for city buses in the EEA[44].

107. This overall picture of the market for city buses in the EEA is – based on the sales figures reported by the various suppliers – roughly confirmed by the Commission's market investigation (see table below). In line with the fact that – as will be discussed in more detail below – MAN as well as Scania are active to a significant extent in the sale of bus chassis to body builders which sell the finished bus on their own account to the final customer, the combined market share of the parties based on sales data is slightly lower.

City buses EEA (%, sales volume 2003-2005)
(Source: Market investigation)

Company	**2003**	**2004**	**2005**	**2003-05**
MAN	[10-20]	[10-20]	[5-15]	[5-15]
Scania	[0-10]	[0-10]	[0-10]	[0-10]
Combined	**[15-25]**	**15-25]**	**15-25]**	**15-25]**
Volvo	[5-15]	[15-25]	[15-25]	[15-25]
DaimlerChrysler	[15-25]	[15-25]	[15-25]	[15-25]
Iveco	[15-25]	[15-25]	[15-25]	[15-25]
Solaris	[0-10]	[0-10]	[0-10]	[0-10]
Van Hool	[0-10]	[0-10]	[0-10]	[0-10]
Others	[20-30]	[20-30]	[20-30]	[20-30]

43 According to the results of the market investigation, operators of city and inter-city bus services on average replace their buses only after more than 12 years.

44 A significant amount of the EEA-wide market share of "Others" has to be attributed to only a limited number of countries (mainly Spain, Portugal and the UK) which – as will be discussed in more detail below – are characterized by the activity of large body-builders. These countries are therefore considered by competitors contacted in the course of the market investigation as "body-builder markets".

108. The activities of MAN and Scania in the market for city buses overlap in various Member States of the EEA. Based on registration figures, the following national markets for city buses would be affected by the proposed transaction basing the analysis at national markets[45]: Sweden, Finland, Norway, Denmark, Poland, UK, Ireland, Spain, Portugal, Germany, Austria, Hungary and Slovenia.

(b) Sweden

(1) Market structure

109. Based on the sales data reported by the suppliers of city buses for the Swedish market, the merged entity in the years 2003 to 2005 with a market share of [35-45]% would catch up to the market leader Volvo ([40-50]%). DaimlerChrysler's (Evobus) market share was [5-15%]% with other players (Solaris, van Hool) reaching market shares of [0-5]% each.

City buses Sweden (%, sales volume 2003-2005)
(Source: Market investigation)

Company	**2003**	**2004**	**2005**	**2003-05**
MAN	[0-5]	[30-40]	[20-30]	[20-30]
Scania	[30-40]	[0-10]	[15-25]	[15-25]
Combined	**[30-40]**	**[35-45]**	**[40-50]**	**[35-45]**
Volvo	[50-60]	[50-60]	[35-45]	[45-55]
DaimlerChrysler	[0-10]	[0-10]	[5-15]	[0-10]
Iveco	[0-5]	[0-5]	[0-5]	[0-5]
Solaris	[0-5]	[0-5]	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]	[0-5]	[0-5]

110. Sales data of the relevant suppliers for the first 9 months of the year 2006 indicate that MAN and Scania seem to have further increased their market position with both holding market shares of well above 30%. In assessing these market share data, however, it has to be taken into account that – as will be discussed in more detail below – the market for city buses in Sweden is a bidding market characterized by "lumpy orders" and hence a market with the market position of the different players varying sometimes significantly over time. According to the tender data collected in the course of the market investigation for the year 2006, MAN so far has not won any tender for city buses in 2006. This fact would normally translate into (presumably) lower sales figures and market shares of MAN in the year 2007.

111. The market-share data confirm that MAN successfully entered the Swedish market in 2002/2003 and increased its market share within a rather short period of time. In the course of the proceedings, Scania argued that the proposed merger would give rise to a significant impediment of effective competition. According to Scania, the negative impact

[45] The approach to use registration data for assessing whether a specific market is affected by the proposed transaction provides a "worst-case" scenario since – as indicated above – registration data also include MAN's and Scania's sales of chassis to body builders which sell the finished product (bus) on their own account to the final customer. For the methodological reasons explained in more detail above, a national market furthermore is considered to be an affected market if the proposed transaction in the time period 2003 to 2005 would lead to horizontal overlaps and if the combined market share of the merged entity in the same time period would be more than 15%.

mainly results from the fact that the merger would remove MAN as a strong recent entrant on the Swedish market for city buses and a significant competitive constraint on the established Swedish manufacturers (Scania, Volvo). Also some of the customers responding in the market investigation[46] expressed the view that the merger between two of the leading suppliers of city buses in Sweden could entail the risk of unilateral price increases by the merged entity.

112. Since post merger the two remaining leading suppliers in the Swedish market for city buses (MAN/Scania and Volvo) would reach a combined market share of more than 80%, the Commission further investigated whether the proposed transaction would significantly impede effective competition due to the risk of coordinated effects.

113. Based on the concerns expressed by Scania and some of the customers, the Commission undertook a detailed inquiry into the Swedish market for city buses. This market investigation focused in particular on the following aspects: (i) the general market environment (also including the "downstream" market for public passenger transport services), (ii) a more detailed assessment of the market share data presented above, (iii) an analysis of the closeness of competition between the merging parties (*inter alia* based on the analysis of tender data submitted by suppliers and customers for city buses), (iv) the competitive constraints stemming from established players in the Swedish market such as Volvo and DaimlerChrysler (Evobus), (v) the competitive constraints stemming from smaller competitors and from actual/potential entrants such as Solaris and van Hool, and (vi) the specific demand-side structure for city buses in Sweden.

(i) General market environment

114. The market for city buses in Sweden is a bidding market. The results of the market investigation show that all customers involved in the Commission's market investigation (representing roughly 80% of the demand for city buses in 2003 to 2005) purchase city buses on the basis of tenders. As regards the type and quality of city buses requested in the tenders, however, the bus operators are bound to the quality standards set by the Public Transport Authorities ("PTA") responsible for public passenger transport services in a specific municipality/county. According to the data gathered in the course of the market investigation, these quality standards in recent years are strongly focused on city buses with environmentally friendly engine technologies, in particular engines based on ethanol and compressed natural gas (CNG) or bio-gas[47].

115. Furthermore, due to the competitive environment in the Swedish "downstream" market for public passenger transport services, the customers for city buses in Sweden have to be

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46 The Commission's market investigation covered all major customers for city buses in Sweden. The customers who replied to the Commission's questionnaire represent roughly 80% of the total demand for city buses in Sweden in the years 2003-2005. It should also be noted that the customers which expressed some concerns with the merger represent only a minority of the city bus market in Sweden.

47 The Swedish Public Transport Association (Svenska Lokaltrafikföreningen, "SLTF"), the Swedish association of the PTAs, in 2004 adopted an environmental program which is updated every year. This programme *inter alia* defines the objectives as regards emission reductions by means of a continuous change-over from fossil to renewable fuels. Based on this programme, the different PTA adopted – as will be discussed in more detail below – strategies for the increased use of buses based on engines for alternative fuels.

considered as very price-sensitive[48]. This is mainly due to the fact that market for public passenger transport services in Sweden belongs – besides the UK market – to one of the most liberalized in the EEA. Contracts for the supply of public passenger transport services are regularly awarded following EU-wide public tenders conducted by the local PTA which is responsible for the public passenger transport in a specific municipality or county[49].

(ii) Detailed analysis of the market structure

116. Due to the specific market environment in the Swedish market described above, the demand for city buses with environmentally friendly engine technology based on alternative fuels (in particular: CNG and ethanol) is very significant. Against this background, a more detailed analysis of the market share data presented above reveals that in particular the market share increase of Scania in the year 2006 is mainly due to various singular factors which can not be expected to fully prevail also in the future.

117. Whereas MAN, like other competitors such as Volvo and DaimlerChrysler, manufacture and offer buses based on the CNG-engine technology, Scania currently is the only supplier worldwide of buses with ethanol engines. Looking specifically at the breakdown of the parties' sales of the buses in the year 2006, the market investigation showed that Scania's recent increase in market share (+[10-20]% in 2006) depends largely on its ethanol engine technology whereas MAN succeeded in the market by offering, as other competitors, CNG engine technology. Without its sales of ethanol buses, Scania's market share in the year 2006 would only amount to less than 10%. The strong influence of the ethanol-technology on the market position of Scania in the Swedish market is further confirmed by the fact that – since in both years there was no demand for ethanol buses – the market share of Scania in the years 2004 and 2005 was significantly lower than in 2006 ([5-10]% and [15-25]% respectively).

(iii) Closeness of competition

118. The data presented above confirm that MAN and Scania currently compete in the market with their buses based on diesel engines. As regards alternative engine technologies, the parties have clearly run different strategies. MAN, like other major competitors such as Volvo and DaimlerChrysler, opted for the CNG technology. Scania, on the contrary, opted for ethanol as a clean engine strategy. It is currently the only supplier of this technology for bus engines worldwide, but the ethanol technology as such is not proprietory to Scania. According to the results of the market investigation, ethanol engines are slightly modified diesel engines running on higher compression level. In the 1990s, e.g. Volvo also developed and tested this technology, later on, however, decided not to market ethanol engines. Some of the major players are furthermore currently developing alternative solutions such as hybrid engines combining fuel and electricity.

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48 Other major elements of the demand-side structure of the Swedish market for city buses will be further discussed in more detail below.

49 The Commission in several previous cases investigated the market for public passenger transport in Sweden. See e.g. Commission Decision of 4 December 2002, Case IV/M.2960 - *Keolis/AB Storstockholm Lokaltrafik/Busslink;* Commission Decision of 10 December 1999, Case IV/M.1768 – *Schoyen/Goldman Sachs/Swebus*

119. Also the tender data submitted by suppliers and customers in the course of the market investigation indicate that MAN and Scania can not be considered as the closest competitors in the Swedish market for city buses. The final ranking of the suppliers in several tenders conducted in the years 2003 to 2006 in particular do not show that in those tenders won by MAN the second best offer was typically submitted by Scania (and vice versa).

(iv) Competitive constraints of established players

120. Against the background of the Swedish city bus market being a bidding market, it has further to be noted that post-merger two other large multi-national bus manufacturers (Volvo and DaimlerChrysler) which are well-established on the Swedish market for city buses would remain on the market. In particular, Volvo is the current market leader and would remain in a strong position comparable to the merged entity in its "home market". Customers clearly indicated that Volvo has one of the best service networks in Sweden.

121. As regards the market position of DaimlerChrysler, the market share data presented above show that it remained an important player over the past years despite the aggressive market entry and expansion of MAN. Several customers in addition stressed the fact that – compared to MAN's service network for city buses in Sweden which is still only focused on some major cities – DaimlerChrysler currently operates a sufficient service network to compete effectively in the market for city buses in all regions of Sweden.

122. The analysis of the tender data in addition show that – except for tenders specifically for ethanol buses – all four major bus suppliers (i.e. MAN, Scania, Volvo and DaimlerChrysler) took part in almost all tenders for city buses in Sweden.

(v) Competitive constraints from actual/potential new entrants

123. The tender data furthermore reveal that – since the year 2004 – smaller competitors like Solaris and van Hool on a regular basis submitted quotes in most of the tenders. Both companies have already won smaller tenders and hence both have reference projects in Sweden. In addition, several customers contacted in the course of the market investigation explicitly confirmed that these smaller competitors exert competitive pressure on the established players, in particular as regards price. One larger customer even submitted that it actively invites smaller players like Solaris to submit offers and also actively "tests" the products offered by these manufacturers.

124. Recent experience in other EEA countries furthermore shows that entry and expansion in the market for city buses is not only possible for large and financially strong players like MAN but also for smaller players such as Solaris and van Hool. In particular, Solaris succeeded in a short period of time to enter the German city bus market and gain significant market shares. According to the results of the market investigation, Solaris doubled its market share in Germany each year since its market entry in 2002, now reaching almost [10-20]%[50].

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50 In a previous case, the Commission in the course of an in-depth investigation inquired into the market for city buses in Germany (see Commission Decision of 20 June 2001, Case No. COMP/M.2201– *MAN / Auwärter*). The initiation of the phase-II investigation was necessary *inter alia* due to the strong "duopolistic" market position of MAN and DaimlerChrysler on the German market for city buses. In the present case, the Commission again investigated the market situation in Germany. The results of the market

125. Finally, Iveco (Irisbus), the largest European manufacturer of city buses, must be considered as a potential entrant to the Swedish market. Iveco already has achieved significant market shares in Finland ([10-20]%) and is active in other neighbouring countries (Norway, Denmark).

(vi) Demand-side structure

126. Furthermore, it has to be noted that – compared to other countries in the EEA – the demand-side for city buses in Sweden is much more concentrated reflecting the fact that the "downstream" market for public passenger transport services in Sweden belongs – besides the UK market – to one of the most liberalized in the EEA.

127. Together with large Swedish operators such as Swebus[51], the major customers for city buses in Sweden comprise large multi-national bus operators (such as the French-based operators Veolia[52] and Keolis/Busslink[53] as well as the UK-based operator Arriva[54]). The market investigation shows that these four operators account for roughly 60% of the demand for city buses in Sweden in 2003 to 2005[55].

128. The activity of multi-national bus operators like Veolia, Keolis/Busslink and Arriva in Sweden facilitates the market entry and/or expansion of other suppliers. These operators

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investigation clearly show that the proposed transaction does not raise any competition concern for this market mainly due to the fact that – in particular following the market entry and expansion of Solaris – the high intensity of competition will not be affected. German customers involved in the market investigation clearly indicated that mainly due to the market entry of Solaris, the competitive environment in the German market improved significantly in recent years.

51 Swebus, the privatized former bus branch of the state-owned Swedish railway company, currently belongs to the Concordia bus group, a bus operator active in the Nordic countries with more than 3.500 buses. Swebus currently operates a fleet of more than 1.200 city buses and roughly 1.400 inter-city buses. According to its own estimates, Swebus currently operates roughly 30% of the Swedish public passenger transport services by buses. The acquisition of Swebus by the Concordia-bus group was assessed an cleared by the Commission (Case No. IV/M.1768 – Schoyen/Goldman Sachs/Swebus)

52 Veolia Transport (formerly Connex) is active as bus operator inter alia in France, Sweden, Germany, Belgium, Finland, Norway and several other EEA countries. In Sweden, Veolia currently operates a fleet of more than 600 city buses and more than 750 inter-city buses.

53 Keolis together with AB Storstockholm Lokaltrafik jointly controls Busslink, one of the largest bus operators in Sweden. Keolis is controlled by the state-owned French railway company SNCF. The Commission assessed and cleared the acquisition of joint control over Busslink by Keolis and AB Storstockholm Lokaltrafik (Case IV/M.2960 - Keolis/AB Storstockholm Lokaltrafik/Busslink). Busslink currently operates a fleet of 850 city buses and 500 inter-city buses.

54 Arriva is active as a bus operator in the UK, Portugal, Spain, Italy, Sweden, Denmark and several other countries in the EEA. Arriva currently operates a fleet of 200 buses, mainly in the South of Sweden.

55 In its previous decision on the Swedish city bus market, the Commission explicitly recognized the strong bargaining position of these operators (see Commission Decision of 14 March 2000, Case COMP/M.1672 – *Volvo/Scania,* paragraphs 299). In this decision, however, the argument submitted by parties to this transaction (Volvo/Scania) that these customers would have countervailing buyer power was rejected mainly because of the very high combined market shares of Volvo/Scania post-merger (more than 80%). As discussed in more detail above, in the present case the combined market share of the parties in Sweden would be significantly lower and Volvo as well as DaimlerChrysler would remain in the market as strong supply alternatives.

are also active as bus operators in those countries where the Italian manufacturer Iveco (Irisbus) currently is the market leader for city buses (e.g. France, Italy) or smaller competitors like Solaris and van Hool hold significant market position (Belgium, Germany) and they are hence familiar with the products of these suppliers.

(vii) Combination of alternative engine technologies

129. The merger would combine the ethanol and the CNG engine technology in one entity. However, it should be noted that according to the results of the market investigation, there is currently not a combined demand for ethanol and CNG by the customers. Furthermore, the results of the market investigation gives no indications that such a combined demand can be expected in the Swedish city bus market in the foreseeable future for the following reasons:

130. Each of these alternative engine technologies (i.e. CNG/Ethanol) requires investments in additional infrastructure (tanks etc.) by customers. Hence, there are disincentives to use, in parallel, two different environmentally friendly engine technologies. In fact, the largest PTA in Sweden (AB Storstockholms Lokaltrafik, "SL"), responsible for public transport in the Greater Stockholm region, is the leading proponent of ethanol buses. Most of the other PTAs, mainly in Southern Sweden including large cities like Malmö and Gothenburg, on the other hand pursue the clear strategy of reaching the environmental standards by using CNG and biogas. These alternative technologies have competed in the past and are expected to compete in the future (together with other "clean technologies" as well such as hybrid engines).

131. Furthermore it has to be noted that Scania is currently the only supplier offering ethanol engines. This situation remains unaffected by the merger. Since besides MAN also other major players offer the CNG engine technology, competition between the competing technologies based on alternative fuels will remain.

132. Although one customer replying to the Commission's market investigation raised the question whether there might be a risk that MAN decides to stop the production and sale of ethanol engines by Scania post-merger, the Commission considers the incentives of MAN to do so to be very limited. First, it has to be noted that Scania is currently the only supplier of buses with ethanol engines. It is unlikely that the profits derived from this market segment could easily be compensated by profits from supplying buses with other types of engines in market segments were Scania is facing a number of competitors. It should also be underlined that ethanol technology is not a proprietory technology. The market investigation indicates that the other manufacturers have not entered this market mainly because the size of the ethanol market segment has not been important enough compared to the investment necessary to develop an ethanol engine.[56] As indicated above, PTAs in Sweden are planning to significantly increase the share of "clean engine" buses operating in their respective municipality/county. The most important customer of ethanol engines is SL, the largest PTA currently using the ethanol technology. [57]According to publicly available information, SL estimates its need for new buses running on renewable fuel to some 400 between 2007 and 2012. SL's long-term goal is that all buses should run

56 In a contribution of 13.12.2006 MAN has estimated the necessary investment costs to 5-10 milliom Euro.

57 See also the contribution of MAN of 11.12.2006, which includes an annex describing the policy of SL.

on renewable fuel by 2025.Should Scania nevertheless decide to withdraw from the ethanol market segment after the merger the economic incentives for the other manufacturers to develop ethanol engines and enter this market segment would clearly increase.

(viii) Conclusion on the risk of non-coordinated effects

133. Based on these elements presented above, the Commission concludes that the proposed transaction is not likely to give rise to a significant impediment of effective competition on the Swedish market for city buses due to non-coordinated effects.

(2) Coordinated effects

134. Given the fact that the two leading manufacturers in the Swedish market for city buses (MAN/Scania, Volvo) post-merger would obtain combined market shares exceeding 80%, the Commission has assessed whether the merger would increase the risk for co-ordinated effects. The results of the market investigation, however, lead the Commission to conclude that the market for city buses in general and in particular the Swedish market for city buses – in addition to the very high combined market shares of the leading players – display no characteristics which make them susceptible to co-ordinated effects.

135. First it has to be noted that several factors discussed in more detail above, in particular the fact that the Swedish market for city buses is a bidding market[58] characterized by strong, price-sensitive and knowledgeable customers as well as the presence of DaimlerChrysler and several smaller competitors (potential "mavericks") militate against a significant risk of coordinated effects. In addition, the following market features have to be considered.

136. City buses are technically complex products which are produced in a large number of varieties often adapted to the specific need of individual customers ("customization"). Different tenders may also include widely diverging conditions for ancillary services, after-sales servicing, spare-parts delivery, warranties etc. The interplay of all these parameters makes mutual monitoring of each other's competitive behaviour by the supposedly co-ordinating firms very difficult[59].

137. The heterogeneity of the products makes the market less transparent since the difficulty of price comparisons increases with the number of product parameters. Tender-driven markets like in Sweden are not prone to effective tacit collusion between the leading firms. Tacit collusion may possibly occur in procurement markets only under specific conditions. Bidding behaviour may possibly be co-ordinated based on data from previous tenders. However, the Commission concludes that there is no considerable risk that the main players could find of a sustainable co-ordination strategy for the Swedish city bus market. Indeed, since the majority of the Swedish city bus customers are deliberately buying city buses from more than one supplier ("multi sourcing strategy"), any strategy to focus sales on the respective regular customers would not be efficient. Since most customers indicated that they prefer to keep more than one brand in their fleet, customers would hardly accept a strategy according to which the weaker brand(s) in every fleet

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[58] It should, however, be noted that the *mere* fact that the city bus market is a bidding market does not as such exclude possible co-ordinated effects on this market, cf. COMP/M.2201 - *MAN/Auwärter,* paragraph 35.

[59] See also COMP/M.2201 - *MAN/Auwärter,* paragraphs 38-49.

refrain from aggressive competition in order to come to a situation in which every customer just sources from one supplier. Also the strategy to focus on "replacement" orders would not be a realistic co-ordination strategy, since customers do in most cases not specify in their tenders whether buses are tendered for replacement or other reasons[60].

138. In addition, fleet operators buy buses at irregular intervals and in different quantities ("lumpy orders").[61] This volatility makes the market very difficult to predict and makes it most difficult to establish co-ordination mechanisms that are sustainable over time. Moreover, the different size of the bids and the fact that some bids of the large customers can affect a large number of buses[62] make it unattractive for competitors to miss a single bid. The market investigation furthermore has not indicated any existence of structural links between the leading suppliers of city buses in Sweden. Finally, the remaining players on the Swedish city bus market are far from having a parallel structure[63]. Not only in terms of market shares (with DC as an important but significantly smaller competitor than Volvo and Scania/MAN), but also with respect to characteristics (e.g. different geographic focus, different integration level etc.) important differences between the remaining competitors on the Swedish market can be observed, which would make any attempt to tacitly collude even more unstable.

139. Based on these elements, the Commission concludes that the proposed transaction is not likely to give rise to a significant impediment of effective competition due to coordinated effects.

(3) Conclusion for the market for city buses in Sweden

140. For all the foregoing reasons, the Commission considers that competition concerns are unlikely to arise on the market for city buses in Sweden.

(c) Finland

141. Based on the sales data reported by the suppliers of city buses for the Finnish market, the merged entity in the years 2003 to 2005 with a market share of [55-65]% would be the clear market leader with Volvo as the No.2 reaching a market share of [20-30]%. Whereas DaimlerChrysler's market share is insignificant, Iveco (Irisbus) holds [10-20]% of the market.

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60 See also COMP/M.2201 - *MAN/Auwärter,* paragraph 52.

61 According to the market investigation, city buses are typically replaced after 10-15 years.

62 See COMP/M.2201 - *MAN/Auwärter,* paragraphs 48.

63 See COMP/M.2201 - *MAN/Auwärter,* paragraphs 54-56.

City buses Finland (%, sales volume 2003-2005)

Company	2003	2004	2005	2003-05
MAN	[0-5]	[0-5]	[0-5]	[0-5]
Scania	[60-70]	[45-55]	[75-85]	[55-65]
Combined	**[60-70]**	**[45-55]**	**[80-90]**	**[55-65]**
Volvo	[10-20]	[35-45]	[10-20]	[20-30]
DaimlerChrysler	[0-5]	[0-5]	[0-5]	[0-5]
Iveco	[15-25]	[5-15]	[0-5]	[10-20]

142. According to the results of the market investigation, city buses are purchased in Finland following European-wide public tenders. As can be seen from the table above, MAN's market position in Finland is however weak and not comparable to the position in e.g. Sweden[64].

143. Based on the market share data, Volvo would have to be considered as Scania's strongest competitor. The Finnish customers for city buses involved in the market investigation confirmed clearly indicated that they consider the products of Volvo and Scania being the closest substitutes. One customer explicitly stated that Volvo would offer strong competition to the merged entity in the market for city buses. In addition, besides Volvo also Iveco is present in the market holding a significant market share.

144. Moreover, the market investigation did not reveal competition concerns by customers in the Finnish city-bus market.

145. It is also unlikely that the proposed merger would lead to coordinated effects. As discussed in more detail above for the Swedish market, the markets for city buses in general do not display the characteristics which would make them susceptible to co-ordinated effects. Besides the fact that – as indicated above – also the market for city buses in Finland is a bidding market, it has further to be noted that – contrary to Sweden where DaimlerChrysler has to be considered as a strong competitive constraint on Volvo and MAN/Scania post-merger – this position in Finland is for Iveco as the remaining of the four leading bus manufacturers in the EEA.

146. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the Finish market for city buses.

(d) Norway, Denmark and Poland

147. According to the market share data submitted by MAN (based on registration data) for the markets for city buses in Norway, Denmark and Poland, the proposed transaction would also lead to horizontal overlaps in these affected national markets for city busses. For Norway and Denmark the combined market shares would be roughly [35-45]% (see table below).

64 Due to the small market volume, the market position of MAN in Finland is based on the sale of 4 city buses in the years 2003 to 2005.

City buses Norway, Poland, Denmark (%, volume 2003-2005)
(Source: Notifying party, registration data[65])

Company	Norway	Denmark	Poland
MAN	[5-15]	[0-10]	[10-20]
Scania	[20-30]	[35-45]	[0-10]
Combined	[35-45]	[35-45]	**[15-25]**
Volvo	[40-50]	[40-50]	[5-15]
DaimlerChrysler	[10-20]	[0-10]	[0-5]
Iveco	[0-5]	[0-5]	[0-5]
Solaris	[0-5]	[0-5]	[0-5]
Others	[0-5]	[0-10]	[60-70]

148. As discussed in more detail above, registration data, however, under certain circumstances overestimate the market position of those bus manufacturers which – like MAN and Scania – also sell chassis to other bus suppliers (body builders) which only build up the body of the bus and sell the finished product (entire bus) on their own account to the final customer. As is shown in the table below which summarizes the results of the reconstruction of the respective markets based on the sales data reported by the various suppliers to the Commission, the effect on the market position of the merged entity can be significant.

149. Whereas the registration data indicate that the merged entity would hold a combined market share in the markets for city buses in Norway and Denmark of roughly [35-45]%, the market position of the merged entity based on the data on bus sales lead to much lower market shares of [20-30]% and [15-25]% respectively. The fact that the data submitted by MAN for Poland do not show the same difference is linked to the fact that registration data is lacking for this country and MAN submitted estimates on the suppliers' sales.

City buses Norway, Poland, Denmark (%, sales volume 2003-2005)
(Source: market investigation)

Company	Norway	Denmark	Poland
MAN	[10-20]	[0-10]	[10-20]
Scania	[5-15]	[10-20]	[0-10]
Combined	[20-30]	[15-25]	**[15-25]**
Volvo	[10-20]	[10-20]	[5-15]
DaimlerChrysler	[10-20]	[0-10]	[0-10]
Iveco	[0-10]	[0-10]	[0-10]
Solaris	[0-5]	[0-5]	[25-35]
Others	[40-50]	[55-65]	[35-45]

150. Considering the market share structure based on sales data, any significant impediment of effective competition resulting from the proposed transaction can be excluded due to the relatively low level of market shares and the presence of a sufficient number of competitors. In any event, even considering for Norway and Denmark the market share structure based on registration data, competition concerns are unlikely to arise from the proposed transaction. Volvo, DaimlerChrysler and Iveco are all present in both countries. Customers involved in the Commission's market investigation furthermore clearly

65 For Poland official registration data are not available. And these figures are estimates off sales by MAN.

identified Volvo and Scania as being the closest competitors and raised no objections against the merger.

151. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the market for city buses in Norway, Denmark and Poland.

(e) Spain, Portugal, UK and Ireland

152. The deviation of market share levels based on registration and sales data for finished buses is most relevant for those countries where body builders play a very significant role on the market. This is in particular true for the Iberian countries (Spain, Portugal) and the UK and Ireland which – according to all bus suppliers contacted in the course of the Commission's market investigation – essentially can be described as "body-builder markets". This assumption is reflected by the sales data for finished buses reported by the different suppliers.

153. Based on the *sales data* for finished buses, the only national markets for city buses that would be technically affected by the proposed transaction is Spain where the combined market share of MAN and Scania would reach [25-35]%. In all the other countries, the combined market share of the merged entity would be less than 15% (UK) or the proposed transaction would not lead to any horizontal overlaps since Scania does not sell finished city buses in these countries (Portugal, Ireland).

154. Based on *registration data*, the merged entity would – for those countries where the proposed transaction lead to any horizontal overlap – reach its highest market share in Spain ([40-50]%; MAN: [25-35]%, Scania: [10-20]%). Since, however, based on registration data, Iveco would reach a market share of [30-40]%, DaimlerChrysler of [10-20]% and Volvo of [0-10]%, even based on registration data, the market structure post-merger would not be indicative of competition concerns.

155. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the market for city buses in Spain, Portugal, UK and Ireland.

(f) Austria, Germany, Hungary and Slovenia

156. In several countries, the proposed transaction – due to the fact that Scania is currently not active on these national markets for city buses – would not lead to any horizontal overlap. Since, however, in at least some of these countries MAN hold significant market shares, the Commission investigated whether and to which extent the proposed transaction is like to significantly impede effective competition by removing a potential entrant on the respective national market.

157. In this regard, the markets for city buses in Austria, Germany, Hungary and Slovenia could potentially be affected by the proposed transaction (see table below).

City buses Austria, Germany, Hungary, Slovenia (%, sales volume 2003-2005)
(Source: market investigation

Company	Austria	Germany	Hungary	Slovenia
MAN	[50-60]	[25-35]	[30-40]	[70-80]
Scania	0	0	0	0
Combined	**[50-60]**	**[25-35]**	**[30-40]**	**[70-80]**
Volvo	[0-10]	[0-10]	[0-10]	[0-10]
DaimlerChrysler	[40-50]	[55-65]	[30-40]	[5-15]
Iveco	[0-10]	[0-10]	[5-15]	[10-20]
Solaris	[0-10]	[5-15]	[10-20]	[0-10]

158. In assessing the likelihood of a significant impediment of effective competition due to the removal of Scania as a potential entrant it has to be noted that a merger with a potential entrant is only expected to generate significant anti-competitive effects if the relevant market concerned is already pre-merger characterized by very weak or even insufficient competitive constraints of the actual competitors on the merged entity. Furthermore, anti-competitive effects are only to be expected under the condition that (i) there is a significant likelihood that the potential entrant would enter and grow into an effective competitive force, and (ii) there must not be a sufficient number of other potential competitors which would maintain sufficient competitive pressure after the merger.[66]

159. The inquiry into the market for city buses in **Austria** provided no indications that MAN market behaviour is currently not sufficiently constrained by other suppliers already active in the market. As is shown in the table above, the market for city buses is currently characterized by a strong presence of MAN and DaimlerChrysler. Due to the general market characteristics described in more detail above, however, tacit collusion seems to be unlikely in the market for city buses. According to the results of the market investigation furthermore 100% of the city buses are currently purchased following a European-wide public tender. None of the customers who replied to the Commission's market investigation raised any objection against the proposed transaction.

160. Finally, the market investigation provided no indication that Scania is a committed potential entrant on the market for city buses in Austria. In addition, post-merger the leading manufacturer of city buses in the EEA (Iveco/Irisbus) would still remain a strong potential entrant on the market for city buses in Austria. In this regard it has to be noted that Iveco currently is the market leader for city buses in one of the neighbouring countries (Italy).

161. Despite the fact that MAN and DaimlerChrysler hold a combined market share in the market for city buses in **Germany** of more than 90%, the removal of Scania as a potential is not expected to significantly impede effective competition for the following reasons.

162. First, it has to be noted that in a previous case the Commission inquired in depth into the German market for city buses and concluded that the market displays no characteristics which would make it susceptible to co-ordinated effects[67]. Second, the market

66 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertaking, paragraph 60

67 Commission Decision of 20 June 2001, Case No. COMP/M.2201–*MAN / Auwärter*

investigation conducted in the present case show that smaller competitors (in particular Solaris) successfully entered the market and significantly increased their market shares in recent years.

163. German customers who replied to the Commission's market investigation furthermore clearly indicated that 100% of the city buses are purchased following European-wide public tenders. In addition, none of the respondents raised objections against the proposed transactions. On the contrary, several customers explicitly stressed the fact that competition in the German market for city buses increased in recent years and that the proposed transaction will have no negative impact.

164. In **Hungary**, the merged entity would hold a market share of more than 35%. Serious competition concerns resulting from the proposed transaction, however, can be excluded for the market for city buses in Hungary for the following reasons.

165. Besides DC, also IVECO and smaller competitors (in particular Solaris) are present or successfully entered the market and significantly increased their market shares in recent years. Customers who replied to the Commission's market investigation clearly indicated that (since 2005) almost 100% of the city buses are purchased following European-wide public tenders. None of the respondents raised objections against the proposed transaction. On the contrary, several customers explicitly stressed the fact that competition increased in recent years in the Hungarian market and that the proposed transaction will have no negative impact.

166. MAN holds, in the market for city buses in **Slovenia,** a market share of [70-80%] for the time-period 2003 to 2005. Due to the small market volume and the fact that a high market share may only be due to contracts awarded in only one year ("lumpy orders"), this market share for the time-period 2003 to 2005 however overestimates the market position of MAN in Slovenia.

City buses Slovenia (%, sales volume 2003-2005)
(Source: market investigation)

Company	**2003**	**2004**	**2005**	**2003-05**
MAN	[85-95]	[10-20]	[45-55]	[65-75]
Scania	0	0	0	0
Combined	**[85-95]**	**[10-20]**	**[45-55]**	**[65-75]**
Volvo	[0-5]	[0-5]	[0-5]	[0-5]
DaimlerChrysler	[5-15]	[10-20]	[45-55]	[5-15]
Iveco	[0-5]	[65-75]	[0-5]	[10-20]

167. The total market volume for city buses in Slovenia in the time period 2003 to 2005 amounts to less than 40 units. MAN's market position furthermore is mainly based on winning a significant contract in the year 2003. The market share data presented in the table above in addition indicate that in 2004 Iveco and in 2005 Daimler Chrysler had higher or similar market shares than MAN.

168. The market data also indicate that DaimlerChrysler and Iveco became active in Slovenia in recent years. Slovenian customers who replied to the Commission's market investigation furthermore indicated that (since 2005) almost 100% of the city buses are purchased following European-wide or national public tenders. None of the respondents raised objections against the proposed transactions.

169. Finally, the market investigation provided no indication that Scania is a committed entrant on the very small market for city buses in Slovenia. In addition, post-merger another leading manufacturer of city buses in the EEA (Volvo) would still remain as a strong potential entrant on the market for city buses in Slovenia.

170. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the market for city buses in Austria, Germany, Hungary and Slovenia.

(g) Overall conclusion for the market for city buses

171. For all the foregoing reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for city buses and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

3) Inter-city buses

(a) Market structure at EEA level and affected national markets

172. According to the data submitted by MAN (see table below), the proposed transaction would lead only to insignificant overlaps in the market for inter-city buses mainly due to the fact that Scania is only active in this market to a very limited extent. On the level of the EEA, the merged entity would reach a market of less than 15% with only a small increment and still be only No. 4 in the market for inter-city buses.

Inter-city buses EEA (%, volume 2003-2005)
(Source: Notifying party, registration data)

Company	**2003**	**2004**	**2005**	**2003-05**
MAN	[5-15]	[5-15]	[5-15]	[5-15]
Scania	[0-5]	[0-10]	[0-10]	[0-10]
Combined	[5-15]	[10-20]	[5-15]	[5-15]
Volvo	[10-20]	[10-20]	[15-25]	[10-20]
DaimlerChrysler	[20-30]	[20-30]	[20-30]	[20-30]
Iveco	[20-30]	[20-30]	[20-30]	[20-30]
Others	[20-30]	[15-25]	[15-25]	[15-25]

173. This overall structure of the market for inter-city buses in the EEA has been confirmed by the Commission's market investigation. As indicated in more detail above, the Commission reconstructed the market based on the dales data reported by the various suppliers. As can be seen from the table below, the deviation of the market shares of each of the suppliers are insignificant.

Inter-city buses EEA (%, sales volume 2003-2005)
(Source: market investigation)

Company	2003	2004	2005	2003-05
MAN	[5-15]	[5-15]	[5-15]	[5-15]
Scania	[0-10]	[0-10]	[0-10]	[0-10]
Combined	[10-20]	[5-15]	[5-15]	[5-15]
Volvo	[10-20]	[10-20]	[15-25]	[10-20]
DaimlerChrysler	[20-30]	[20-30]	[20-30]	[20-30]
Iveco	[25-35]	[20-30]	[25-35]	[25-35]
Others	[10-20]	[15-25]	[10-20]	[15-25]

174. The market investigation further confirmed MAN's submission that Scania is only active in this market to a very limited extent. The proposed transaction would – based on registration data – lead to significant horizontal overlaps only in Hungary. Since – as has been discussed in more detail above – the merged entity would hold a very significant market position in the neighbouring market for city buses, the Commission furthermore specifically inquired into the market for inter-city buses in Sweden. The transaction in addition leads to horizontal overlaps and combined market shares of more than 15% in the Danish market for inter-city buses.

(b) Sweden

(1) Market structure

175. On the basis of registration data submitted by the Notifying Party, MAN and Scania would have a combined market share of the Swedish market for inter-city buses of approximately 20%. During the Commission's market investigation with a view to reconstructing the market based on actual sales data, it became however apparent that the various suppliers allocate their sales of inter-city buses and coaches pursuant to different methods between these two markets in Sweden.

176. The allocation of buses to the markets for inter-city buses and coaches is indeed particularly difficult in Sweden due to the specific climatic conditions and the long distances between cities/agglomerations, which lead operators of inter-city bus services in Sweden to often use more luxurious buses that bear several traditional characteristics of coaches.

177. In order to cover any eventualities, the Commission reconstructed the markets in two alternative ways: (i) by allocating sales to the respective markets according to the predominant intended use of the buses sold by each supplier, and (ii) by allocating sales according to the characteristics of the buses sold by each supplier.

178. Based on the market share data derived from this exercise, the Swedish market for inter-city buses provides the following market structure (see table below[68])

68 The table displays ranges of market shares mentioning the lowest and the highest market share based on the alternative way of allocating bus sales to the market for inter-city buses.

Inter-city buses Sweden (%, sales volume 2003-2005)
(Source: market investigation)

Company	2003	2004	2005	2003-05
MAN	[0-5]	[5-10]%	[5-10]%	[5-10]%
Scania	[15-30]%	[5-10]%	[30-50]%	[15-30]%
Combined	**[15-30]%**	**[10-20]%**	**[35-55]%**	**[20-35]%**
Volvo	[55-75]%	[50-75]%	[40-55]%	[50-70]%
DaimlerChrysler	[5-15]%	[15-25]%	[5-10]%	[10-20]%

179. The combined market share of the parties over the period between 2003 and 2005 would reach [20-35]%[69] with MAN holding a rather weak position of [5-10]%. Clear market leader in the Swedish market for inter-city buses is Volvo holding [50-70]%[70] of the market. In addition, DaimlerChrysler is active in the market with market shares of well above 10%[71].

180. Despite the highly concentrated market structure post-merger, the proposed transaction is unlikely to significantly impede effective competition in the Swedish market for inter-city buses for the following reasons.

(2) Risk of non-coordinated effects

181. Like for city buses, the market-share data on the one hand confirm that MAN recently also entered the Swedish market for inter-city buses. The increase of market share, on the other hand, is much less significant than in the market for city buses. Also the total market share of the combined entity would be significantly lower ([20-35]% compared to [35-45]% in city buses). As regards Scania's market position, it has further to be noted that, contrary to the market for city buses, environmentally friendly fuels are less important for inter-city buses. This is mainly due to the fact that inter-city buses over longer distances with the relevant infrastructure (fuel stations for CNG/ethanol) being not readily available in all regions of Sweden[72]. Accordingly, Scania's market position is not backed up by its strong position as sole supplier of the ethanol engine technology.

182. The weaker market position of MAN inter-city buses compared to city buses in Sweden furthermore coincides with a respectively stronger competitive constraint stemming from DaimlerChrysler. This is linked to the fact that – as has been confirmed by customers for inter-city buses contacted in the course of the market investigation – the service network of MAN is focused on several “bridge heads” whereas DaimlerChrysler operates a sufficiently dense service network to compete effectively with the leading players Volvo and Scania in the market for inter-city buses.

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69 The merged entity reaches higher market shares if the sales are allocated to the market according to the characteristics of the bus.

70 Volvo reaches higher market shares if the sales are allocated to the market according to the predominant intended use of the bus.

71 DaimlerChrysler like the merged entity reaches higher market shares if the sales are allocated to the market according to the characteristics of the bus.

72 As described in more detail above, this problem is not least also borne out by the fact that local PTAs currently run different strategies on alternative fuels.

183. The majority of Swedish customers who operate inter-city buses furthermore indicated that they do *not* consider the products of MAN and Scania to be the closest substitutes. This is confirmed by the data submitted by customers on the final ranking of suppliers in public tenders which in most cases show Volvo and Scania being the closest bidders.

184. In addition, the market investigation shows that most of the leading suppliers of city-bus services (i.e. Swebus, Veolia, Keolis/Busslink, Arriva) are also active as operators of inter-city bus services. As discussed in more detail above for the market for city buses, these knowledgeable and price-sensitive customers are – due to their activities in other European countries – very familiar with the products of all bus suppliers in the EEA and may thus facilitate new market entries also in the market for inter-city buses in Sweden. Market entry and expansion is furthermore facilitated by the fact that - as has been confirmed by all customers involved in the Commission's market investigation (representing roughly 80% of the demand for inter-city buses in 2003 to 2005) – inter-city buses are purchased on the basis of public or private tenders.

(3) Risk of coordinated effects

185. Despite the high combined market shares of the leading suppliers of inter-city buses in Sweden post-merger (MAN/Scania, Volvo), the market investigation did not provide indications that the market display characteristics which would make it susceptible to co-ordinated effects of the proposed transaction.

186. Like for city buses, also the Swedish market for inter-city buses is a bidding market characterized by strong, price-sensitive and knowledgeable customers as well as the presence of DaimlerChrysler. In addition, all the smaller competitors active in the market for city buses (Solaris, van Hool) also offer inter-city buses.

187. Finally, also the remaining features of the Swedish market for inter-city buses are very similar to the market for city buses explained in more detail above. Also inter-city buses are technically complex products which are produced in a large number of varieties. This heterogeneity of the products makes the market less transparent since the difficulty of price comparisons increases with the number of product parameters. In addition, also inter-city buses are bought by fleet operators at irregular intervals and in different quantities ("lumpy orders"). This volatility – which is also confirmed by the volatility of the annual market shares of Volvo and MAN/Scania (in particular in the year 2005 compared to 2003/2004) – makes the market very difficult to predict and makes it most difficult to establish co-ordination mechanisms that are sustainable over time.

(4) Conclusion for the Swedish market for inter-city buses

188. Based on these elements, serious competition concerns can be excluded for the market for inter-city buses in Sweden.

(c) Hungary

189. Since no official registration data are available for Hungary, MAN provided in the form CO market share estimates based on its best estimates on the suppliers' sales of inter-city buses in Hungary. According to these estimates, the parties would reach a combined market share of roughly [45-55]%. The reconstruction of the market for inter-city buses in Hungary conducted by the Commission based on the sales data reported by the suppliers

(see table below) however do not confirm this estimate and clearly show that the market position of the merged entity in 2003 to 2005 would be significantly weaker ([25-35]%).

Inter-city buses Hungary (%, sales volume 2003-2005)
(Source: market investigation)

Company	**2003**	**2004**	**2005**	**2003-05**
MAN	[10-20]	[45-55]	[0-10]	[10-20]
Scania	[45-55]	[0-10]	[0-10]	[5-15]
Combined	**[65-75]**	**[50-60]**	**[5-15]**	**[25-35]**
Volvo	[0-5]	[0-5]	[20-30]	[15-25]
DaimlerChrysler	[5-15]	[5-15]	[0-10]	[0-10]
Iveco	[15-25]	[25-35]	[15-25]	[20-30]
Others	[0-5]	[0-5]	[0-5]	[0-5]

190. The annual market share data reveal that the parties in the year 2003 and 2004 reached significant combined market shares of almost 70% and more than 50% respectively. Despite these high market shares, however, competition concerns can be excluded for the market for inter-city buses in Hungary for the following reasons.

191. First, the total market volume for inter-city buses in Hungary is small reaching less than 120 buses in the time period 2003 to 2005. The high market shares of the merged entity are therefore mainly based on winning significant contracts in these years. Secondly, the market share data presented in the table above also clearly indicate that Iveco was present in the Hungarian market with significant sales. In addition, also DaimlerChrysler at least in the year 2004 reached a market share of more than 10%. Even more important, the data clearly show that Volvo successfully entered the market in 2005 with gaining a significant market share of more than [15-25]%.

192. Finally, it has to be noted that Hungarian customers for inter-city buses who replied to the Commission's market investigation indicated that (since 2005) almost 100% of the inter-city buses are purchased following European-wide public tenders. None of the respondents raised objections against the proposed transactions. On the contrary, several customers explicitly stressed the fact that competition increase in recent years in the Hungarian market and that the proposed transaction will have no negative impact.

193. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the market for inter-city buses in Hungary.

(d) Denmark

194. As regards the market structure (see table below), the Danish market for inter-city buses provides some similarities to the market for inter-city buses described in more detail above. Post-merger, Volvo would still be the clear market leader holding more than 60% of the market followed by the merged entity reaching [20-30]%. In addition, DaimlerChrysler is active in the market reaching a market share of roughly [5-15]%.

Inter-city buses Denmark (%, sales volume 2003-2005)
(Source: market investigation)

Company	2003	2004	2005	2003-05
MAN	[0-10]	[15-25]	[0-10]	[5-15]
Scania	[0-10]	[15-25]	[20-30]	[15-25]
Combined	**[0-10]**	**[35-45]**	**[20-30]**	**[20-30]**
Volvo	[75-85]	[45-55]	[60-70]	[60-70]
DaimlerChrysler	[10-20]	[0-10]	[5-15]	[5-15]
Iveco	[0-10]	[0-10]	[0-10]	[0-10]
Others	[0-5]	[0-5]	[0-5]	[0-5]

195. On the other hand, the Danish market also provides some significant differences to the Swedish market. The total market volume for inter-city buses in Denmark is significantly smaller reaching only roughly one third of the market volume in Sweden. This fact translates – in particular considering that inter-city buses are bought by fleet operators at irregular intervals and in different quantities ("lumpy orders") – into the observation that the volatility of the market shares of the different players is more pronounced than in Sweden. This conclusion in particular is confirmed by the volatility of the annual market shares of Volvo and MAN (see table above). In addition, contrary to Sweden, Iveco is active in the market for inter-city buses in Denmark.

196. Danish customers who operate inter-city buses furthermore mentioned that besides Iveco also smaller competitors (like VDL) recently entered the Danish market for inter-city buses. They furthermore indicated that the products of MAN and Scania cannot be considered to be the closest substitutes and that the proposed transaction will have no negative impact on the market for inter-city buses in Denmark.

197. Based on these elements, the Commission considers that competition concerns are unlikely to arise on the market for inter-city buses in Denmark.

(e) Overall conclusion for the market for inter-city buses

198. For all the foregoing reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for inter-city buses and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

4) Coaches

(a) Market structure in the EEA and affected national markets

199. The coach market in the EEA is characterised by the co-existence of, on the one hand, five major integrated coach manufacturers, DaimlerChrysler (Evobus), Volvo, MAN (Neoman), Scania and Iveco (Iribus) and, on the other hand, several less integrated coach manufacturers such as VDL, van Hool and Temsa as well as a large number of body builders such as Plaxton (UK), Sunsundegui (Spain) and S. Caetano (Portugal). All these players compete against each other on the end-customer markets for coaches. In addition, many body builders are customers of the five large integrated coach manufacturers with respect to the supply of chassis (see below) and also their co-operation partners with respect to the provision of body building services.

200. MAN is a fully integrated manufacturer of all types of buses. Scania, in contrast, does not itself build the bodies of the coaches it sells in the EEA, but co-operates for this purpose with the Spanish body builder Irizar, which acts as a sub-contractor to Scania. The final coach is sold under dual brands (“Scania-Irizar”).

201. Based on registration data for coaches, MAN/Scania would become the second largest coach manufacturer in the EEA after DC. In addition, Iveco and Volvo are strong pan-European players:

Coaches EEA (%, registrations 2004, 2005)

Source: MAN, based on official registration figures

	MAN	Scania	Comb.	DC	Volvo	Iveco	Others
2005	14,8	13,3	**28,1**	29,8	10,9	11,6	19,6
2004	15.5	13.9	**29.4**	31.3	11.3	13.8	14.3

202. Registration data are commonly used in the industry. As explained above, they however do not reveal the full reality of the market structure as they allocate the sales of complete coaches by independent body builders to the manufacturer of the chassis (as the homologation with the public authority is usually carried out by the chassis maker). Most chassis across the EEA are supplied by one of the five large coach manufacturers. The Commission's market investigation has shown that, particularly with respect to coaches, on the basis of sales data provided by the various manufacturers, the EEA market share for coaches of DaimlerChrysler (which sells relatively few chassis) is proportionally higher and that the market shares of MAN, Scania and Volvo (which sell a larger number of chassis) are proportionally lower than reflected in the registration data. The following table setting out the market shares based on actual sales of complete coaches also reveals that smaller players such as VDL, Temsa and van Hool have gained ground vis-à-vis the more established coach manufacturers.

Coaches EEA (%, sales volume 2004, 2005)

Source: Commission investigation

Company	**2005**	**2004**
MAN	[5-15]	[10-20]
Scania	[5-10]	[5-10]
Combined	**[10-20]**	**[15-25]**
Volvo	[5-10]	[5-10]
DaimlerChrysler	[20-30]	[30-40]
Iveco	[5-10]	[5-10]
VDL	[5-10]	[5-10]
Temsa	[0-5]	[0-5]
van Hool	[0-5]	[0-5]
Others	[20-30]	[10-15]

203. Since registration data tend to exaggerate rather than to underestimate the market position of the parties to the proposed concentration (given that they sell more separate chassis than most of their competitors[73]), they may be used as basis to identify those Member

73 The only exception being Volvo, see in more detail below.

States where the concentration may give rise to competition concerns. On the basis of 2005 registration figures, the proposed concentration would lead to affected markets for coaches in the UK, Ireland, Spain, Portugal, Sweden, Denmark, Norway, Finland, Poland, Germany, Greece, Italy and Slovenia. In all other Member States, the combined market share of MAN and Scania is either inferior to 15% or no addition of market shares occurs. The affected markets are analysed in more detail in the following sections.

(b) UK and Ireland

204. Registration figures for the UK and Ireland show that MAN/Scania would have a strong position both on the UK and Irish coach markets. In the UK, the combined market share was [50-60%] in 2005 and [50-60%] in 2004. Due to a relatively low market volume, market shares tend to fluctuate more in Ireland, where the merged entity would have had a combined share of [55-65%] in 2005 and of [30-40%] in 2004. Registration data indicate that, particularly in the UK, "other" coach manufacturers and body-builders account for a significant portion of the market (35-40%). The Commission's investigation confirmed that smaller coach manufacturers and body builders play a more important role in the UK and Ireland than in most other EEA Member States.

(1) UK

205. A reconstruction of the market structure based on sales data (actual sales of complete coaches) submitted by the competitors, shows that in the UK the body builder Plaxton is currently the leading supplier of coaches. Plaxton sells complete coaches based on chassis sourced from several of the major coach and chassis suppliers (which is the reason why Plaxton itself does not appear in the registration data submitted by the Notifying Party and why its sales are accounted for in the registration figures of the chassis suppliers). On the basis of the actual sales of complete coaches, a merger of MAN and Scania would lead to a combined market position that equals that of Plaxton:

Coaches UK (%, sales volume 2004, 2005)

Source: Commission investigation

Company	**2005**	**2004**
MAN	[0-10]	[5-15]
Scania	[20-30]	[15-25]
Combined	**[25-35]**	**[25-35]**
Volvo	[10-15]	[10-15]
DaimlerChrysler	[5-10]	[5-10]
Iveco	[0-5]	[0-5]
Plaxton	[25-35]	[25-35]
VDL	[15-20]	[15-20]
Temsa	[0-5]	[0-5]
van Hool	[0-5]	[0-5]

206. In addition, several other competitors established on the UK coach market such as Volvo, DaimlerChrysler and VDL are also in a position to exercise competitive constraints on the merged entity. All major coach suppliers are well-represented in the UK in terms of distribution and service outlets. Respondents emphasised that the UK coach market is currently very competitive and that they would expect it to remain so post-merger. In view of these circumstances, the Commission considers it unlikely that the proposed

concentration would give rise to unilateral or co-ordinated effects leading to a significant impediment to effective competition in the coach market in the UK.

(2) Ireland

207. In Ireland, the situation is similar to the UK as regards the fact that registration figures overstate the market shares of integrated coach and chassis manufacturers. The data for the actual sales of complete coaches submitted by the suppliers show that, in addition to the two largest players on the Irish coach market (Scania and DC), there are several competitors active in selling coaches in Ireland (Plaxton, VDL, van Hool, Volvo and Temsa).

Coaches Ireland (%, sales volume, 2004, 2005)

Source: Commission investigation

Company	**2005**	**2004**
MAN	[0-10]	[0-10]
Scania	[45-55]	[45-55]
Combined	**[45-55]**	**[45-55]**
Volvo	[5-10]	[0-5]
DaimlerChrysler	[5-10]	[25-35]
Iveco	[0-5]	[0-5]
Plaxton	[5-10]	[0-5]
VDL	[10-15]	[5-10]
Temsa	[0-5]	[0-5]
van Hool	[5-10]	[0-5]

208. MAN did not sell any coaches in Ireland in 2003 and 2004 and sold four coaches in 2005.[74] The market position of MAN in Ireland is weak and the horizontal overlap is very small. The proposed transaction will therefore have a very limited impact on the Irish coach market.

209. In any event, Scania and MAN are likely to remain subject to competitive pressure on the Irish coach market especially from DC, VDL and Plaxton, the strongest coach supplier in neighbouring UK. Moreover, Volvo has a well established presence in the market with three distribution- and six service-outlets. The market investigation showed that Volvo is regarded as a close competitor to Scania in Ireland. Another customer emphasised the competition resulting from the recent market entry and expansion of VDL and Temsa. There are also indications that Irish coach operators actively consider offers from coach suppliers and distributors located in other countries (mostly likely in the UK). The Commission did not receive any comments from customers suggesting that the proposed concentration would give rise to competition concerns.

210. On this basis, the Commission considers that the concentration is unlikely to raise serious doubts in the market for coaches in Ireland.

74 These four coaches were MAN chassis with bodies built by an Irish body builder and sold by the authorised MAN importer in Ireland.

(c) Spain and Portugal

211. Purchasing patterns of coach customers in Spain and Portugal are very different compared to other countries within the EEA. As described above (VII A 4), coach customers have four options for acquiring a coach. In most other EEA countries, customers buy a complete coach either from one of the major coach manufacturers or from a body builder. In Spain and Portugal, in contrast, it is common that customers buy the chassis and the body separately paying two invoices. Also in Spain and Portugal, however, a significant number of complete coaches are sold by integrated coach manufacturers and by body builders.

(1) Spain

212. On the basis of registration data for Spain and Portugal, the merged entity would have had a combined market share of [35-45%] in 2005 and [30-40%] in 2004. The registration figures, however, allocate all different sales of coaches and chassis, without distinction, to the manufacturer of the chassis. They therefore do not reflect the importance of transactions under the "two-invoice system" and sales of complete coaches made by body builders are included in the market shares of the chassis manufacturers. The Commission investigated the different methods of selling coaches in Spain and reconstructed the market on the basis of the sales figures submitted by the various coach suppliers. The following table distinguishes between (i) the sales of complete coaches to customers, (ii) the sales of chassis to body builders (which use them as inputs for complete coaches. These coaches are usually registered under the name of the chassis producer) and (iii) the sales of chassis to end-customers (who purchase separately the body from a body builder under the two invoice system):

Coaches Spain (%, sales volume, 2004, 2005)

Source: Commission investigation

	2005	2004
MAN total	**[15-25]**	**[10-20]**
MAN full coach	[5-15]	[0-10]
Body builder ("BB") full coach on MAN chassis	[0-10]	[0-10]
MAN together with BB (2 invoice)	[5-15]	[0-10]
Scania total	**[25-35]**	**[20-30]**
Scania full coach	[0-5]	[0-5]
Scania together with BB (2 invoice)	[25-35]	[20-30]
DC total	**[15-20]**	**[15-25]**
DC full coach	[0-5]	[0-5]
DC together with BB (2 invoice)	[10-15]	[15-20]
Volvo total	**[15-20]**	**[10-15]**
Volvo full coach	[0-5]	[0-5]
BB full coach on Volvo chassis	[0-5]	[0-5]
Volvo together with BB (2 invoice)	[10-15]	[5-10]
Iveco total	**[15-25]**	**[20-30]**
Iveco full coach	[10-15]	[15-20]
Iveco together with BB (2 invoice)	[5-10]	[5-15]
Temsa total	**[0-5]**	**[0-5]**
Temsa full coach	[0-5]	[0-5]
VDL total	[0-5]	[0-5]
VDL together with BB (2 invoice)	**[0-5]**	**[0-5]**

213. These sales data show that the merged entity would face significant competition in Spain from the three other major coach and chassis manufacturers (DC, Volvo and Iveco). This competitive pressure exists regardless of whether one considers all transactions in which the major players are involved (be it as supplier of a full coach or as supplier of the chassis) or only those transactions where the manufacturers sell a complete coach.

214. Considering all types of sales to coach customers (complete coaches and chassis[75]), the merged entity would have had a combined market share of [40-50]% in 2005 and [35-45]% in 2004 whereas DaimlerChrysler accounted for [15-20]% of the market in 2005 and [15-25]% in 2004. Volvo had a share of [15-20]% in 2005 and a share of [10-15]% in 2004 and Iveco's market shares amounted to [15-25]% in 2005 and [20-30]% in 2004.

215. Considering only complete coaches, Iveco is the largest supplier in Spain followed by MAN and then DaimlerChrysler and Volvo. Scania does not play any significant role as regards sales of complete coaches, which implies that in this respect the proposed concentration would not have any appreciable impact on the market.

216. Moreover, the table above shows that on the Spanish coach market, sales of complete coaches by the large coach manufacturers accounted for 25% of total sales to end-customers. The remaining 75% are mostly separate sales of chassis and body under the two invoice system. Under this system, a large number of body builders are active in the Spanish market, the major ones include Irizar, Noge, Sunsundegui, Beulas, Indcar, Hispano, Andecar and Unvi.

217. In the market investigation, the Commission found that, due to the two invoice system, body builders play an important role on the Spanish market. First, they directly compete with coach manufacturers when they also sell complete coaches. Second, body builders, in conjunction with chassis suppliers, ultimately offer customers finished coaches (albeit with two invoices). In this sense, body builders (together with chassis makers) present a competitive constraint on integrated coach manufacturers.[76] Body builders often have close customer contacts and they are sometimes directly involved in the customer's purchase decision for chassis. All important body builders are able to build bodies on chassis from all major manufacturers and many currently work on chassis from three or more suppliers. Customers and body builders are able to switch chassis suppliers relatively easily. Barriers to switching must therefore be regarded as low.

218. A clear and consistent majority of customers responding to the Commission's market inquiry indicated that they see no competition issues in relation to the proposed concentration. Certain respondents emphasised the currently high competitive pressure on the Spanish coach market and they expressed no concerns that competition would decrease significantly post-merger.

219. In view of the above circumstances, the Commission considers that the proposed concentration is unlikely to give rise to competition concerns in the market for coaches in Spain.

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75 For a separate assessment of the possibly distinct market for the sale of chassis to end customers in countries where a two invoice system prevails (Spain and Portugal), see below.

76 Almost all major coach manufacturers indicated during the market investigation that, in this respect, they are subject to considerable competitive pressure from body builders on the Spanish coach market.

(2) Portugal

220. The situation on the Portuguese market for coaches is similar to the Spanish coach market. The two invoice system is prevalent also in Portugal and body builders play an important role in the market. Registration data indicate that the merged entity would become the new market leader with a combined share of [40-50%] in 2005 ([55-60%] in 2004) ahead of DC with a share of [20-30%] ([20-30%] in 2004). The following table shows the reconstruction of the market structure on the basis of actual sales figures submitted by the various suppliers during the Commission's market investigation. It distinguishes between (i) the sales of complete coaches to customers, (ii) the sales of chassis to body builders (which use them as input for complete coaches) and (iii) the sales of chassis to end customers (who purchase the body separately from a body builder under the two invoice system).

Coaches Portugal (%, sales volume, 2004, 2005)

Source: Commission investigation

	2005	2004
MAN total	**[15-25]**	**[30-40]**
MAN full coach	[5-15]	[10-20]
BB full coach on MAN chassis	[0-10]	[0-10]
MAN together with BB (2 invoice)	[5-15]	[10-20]
Scania total	**[15-20]**	**[20-30]**
Scania full coach	[0-5]	[0-5]
Scania together with BB (2 invoice)	[15-20]	[20-30]
DC total	**[35-45]**	**[25-35]**
DC full coach	[15-25]	[5-10]
DC together with BB (2 invoice)	[15-20]	[15-25]
Volvo total	**[10-15]**	**[0-10]**
Volvo full coach	[0-5]	[0-5]
BB full coach on Volvo chassis	[5-10]	[5-10]
Volvo together with BB (2 invoice)	[0-5]	[0-5]
Iveco total	**[5-10]**	**[5-10]**
Iveco full coach	[0-5]	[0-5]
Iveco together with BB (2 invoice)	[0-5]	[0-5]
Temsa total	**[0-5]**	**[0-5]**
Temsa full coach	[0-5]	[0-5]

221. The data show that DC had a significantly higher share of actual sales in 2005 than is indicated in registration figures and that the share of the combined entity was actually lower. It also becomes clear from the table above that the major international coach manufacturers are well established on the Portuguese market and compete against each other both (i) in the sale of complete coaches and (ii) in the sale of chassis in conjunction with a body builder under the two invoice system.

222. Considering sales of complete coaches by coach manufacturers, DC had a stronger market position than MAN in 2005 ([20-30]% vs. [5-15]% out of all coaches and chassis sold). In 2004, DC sold more complete coaches than MAN, but still had a share of [5-10]% (out of all coaches and chassis sold). Scania had no significant sales of complete coaches. Consequently, the transaction does not bring about any appreciable change in the market this respect. In addition, Temsa entered the market as a new supplier of complete coaches with a share of [0-5]% in 2005. The Commission notes that Temsa has in recent years

been successful in expanding in other European coach markets (e.g. in France, Germany, Austria and Italy).

223. Considering all types of sales to coach customers (complete coaches and chassis[77]) in Portugal, Volvo, DC and Iveco are well-established on the market and have significant networks of service outlets across Portugal[78] allowing them to effectively compete with MAN and Scania. During the market investigation, a number of customers indicated that they currently operate fleets with coaches based on chassis from three or more of the major manufacturers. Particularly DC and Volvo were mentioned as equivalent alternative suppliers to MAN and Scania.

224. In two invoice systems, competitive pressure on coach manufacturers may also emanate from body builders (in Portugal, e.g. Camo, S. Caetano, Irmãos Mota). Based on the sales data submitted by the coach and chassis manufacturers, sales of complete coaches by body builders account for a significant part (approximately 10%) of all sales in the Portuguese coach markets (including two-invoice transactions). Moreover, as described above in the context of the Spanish coach market, body builders also act as a constraint on chassis manufacturers by means of their ability to build coaches on the chassis of various brands, something which allows customers to freely opt for the chassis supplier offering the most competitive terms and conditions.

225. Some coach customers expressed concerns as to a risk that prices may increase post-merger. However, in view of the competitive environment described above, the Commission considers it unlikely that the proposed concentration would give rise to competition concerns on the Portuguese market for coaches through non-coordinated effects. The Commission also assessed the risk of coordinated effects. Coaches are very heterogeneous products which vary on a number of product parameters (e.g. type and size of the coach, technical specifications such as engine type, equipment etc.). Individually negotiated rebates are common which makes prices non-transparent. The presence of body builders on the Portuguese coach market further adds to the lack of transparency. Given that customers and body builders are able to easily switch the chassis supplier, coaches in Portugal come in an even wider range of variations and combinations of body and chassis then in other Member States. Finally, complete coaches are not only sold by four of the major manufacturers, but also by a new market entrant (Temsa) as well as by some body builders. In these conditions, it is unlikely that a co-ordination mechanism could be sustainable. In conclusion, the Commission does not consider that, with respect to the coach market in Portugal, there are serious doubts as to the compatibility of the proposed concentration with the common market.

(d) Sweden

226. On the basis of registration data submitted by the Notifying Party, MAN and Scania would have a combined market share of the Swedish market for coaches of approximately 20% (2005). During the Commission's market investigation with a view to reconstructing the market based on actual sales data it became apparent that the various suppliers allocate

77 For a separate assessment of the possibly distinct market for the sale of chassis to end customers in countries where a two invoice system prevails (Spain and Portugal), see below.

78 Cf. replies to question 34 of the First Questionnaire to Competitors Buses and Coaches.

their sales of coaches and inter-city buses pursuant to different methods between these two markets in Sweden. As explained above, the Commission therefore reconstructed the markets in two ways to allow an alternative assessment: (i) by allocating of sales to the respective markets according to the predominant intended use of the buses sold by each supplier, and (ii) by allocating sales according to the characteristics of the buses sold by each supplier.

Coaches Sweden (%, sales volume 2004, 2005)

Source: Commission investigation

2005	**Scania**	**MAN**	**Comb.**	**DC**	**Volvo**	**Others**
Allocation by *characteristics*	[10-15]	[15-20]	**[25-35]**	[20-30]	[30-40]	[0-5]
Allocation by *predominant use*	[15-20]	[20-30]	**[35-45]**	[40-50]	[10-15]	[0-5]
2004						
Allocation by *characteristics*	[5-10]	[10-15]	**[20-30]**	[15-25]	[45-55]	[5-10]
Allocation by *predominant use*	[10-15]	[15-25]	**[30-40]**	[40-50]	[15-20]	[0-5]

227. Under both alternative methods, the merged entity would become the second strongest player on the Swedish market for coaches (under one method behind Volvo, under the other behind DC). Volvo and DC are firmly established on the market and in a position to strongly compete against MAN / Scania. In addition, two new suppliers (Temsa and van Hool) have entered the Swedish market for coaches in 2005. Some Swedish customers expressed concerns as to the possibility that the merged entity may raise prices. In view of the above market structure, the Commission, however, does not consider it likely that the proposed transaction would give rise to non-coordinated anticompetitive effects. Besides the fact that with Volvo and DC, equally strong suppliers are active in the market, customers involved in the Commission's market investigation confirmed that MAN and Scania cannot be considered as being the closest competitors.

228. The Commission also analysed the functioning of the Swedish coach market with a view to ascertaining whether it displays characteristics making it susceptible to co-ordinated effects. Coaches are technically complex products which come in a large number of varieties and specifications. The heterogeneity of the products makes the markets for coaches rather in-transparent since the difficulty of price comparisons increases with the number of product parameters (e.g. size of the coach, technical specifications such as engine type, equipment). As order sizes vary from the sale of a single coach to the sale of many coaches to operators of larger fleets, individually negotiated rebates are common, a fact which further decreases price transparency. The interplay of these parameters makes mutual monitoring of each other's competitive behaviour by the supposedly co-ordinating firms difficult.

229. The demand for coaches varies over time since customers tend to buy coaches on an ad hoc basis. Some coach operators appear to replace vehicles in their fleet in shorter intervals, others retain coaches for many years. In particular, the rather irregular occurrence of larger orders creates a certain volatility of demand making it more difficult to establish a co-ordination mechanism which is sustainable over time.

230. Furthermore, smaller competitors like Temsa and van Hool only recently entered the Swedish market, making (as potential "mavericks") sustainable coordinated market behaviour of the leading suppliers less likely. Finally, the market investigation did not

reveal any indications for the existence of structural or commercial links between the major coach manufacturers active in Sweden.

231. On the basis of the above factors, the Commission considers that the proposed concentration does not raise serious doubts as to its compatibility with the common market in relation to the coach market in Sweden.

(e) Other national markets

232. As set out in the following table, on the basis of registration data, a range of further national coach markets could be affected by the proposed concentration:

Coaches other affected markets (%, registrations 2005)

*Source: MAN, based on official registration figures, except **

Country	MAN	Scania	Comb.	DC	Volvo	Iveco	Others
Norway	4,7	31,4	**36,1**	14,1	47,7	0,0	2,2
Finland	1,0	35,0	**36,0**	27,2	30,1	6,8	0,0
Denmark	26,9	11,9	**30,8**	43,3	1,5	0,0	16,4
Poland*	[10-20]	[5-15]	**[25-35]**	[30-40]	[5-15]	[0-10]	[25-35]
Germany	25.1	1.7	**26.7**	55.2	2.7	2.1	13.3
Greece	21.6	3.2	**24.8**	41.7	23.4	0	10.1
Italy	13.9	10.3	**24.2**	31.0	1.0	26.5	17.2
Slovenia*	[10-20]	[0-10]	**[15-25]**	[50-60]	[0-10]	[0-10]	[15-25]

** no official registration data available, figures are MAN estimates*

233. In only one of these national markets, namely Finland, the merged entity would become the new market leader. In Finland, however, MAN has a negligible market share of 1% only in 2005, having sold one single coach in (and three coaches in 2004). The concentration is therefore not likely to have any appreciable impact on the Finnish market for coaches.

234. A rather insignificant addition of market shares would also occur in Germany, where Scania accounts for only 1.7% of all coaches registered in Germany in 2005 (3.3% in 2004). In any event, the merged entity would be faced with a very strong market leader (DC) with a share of 55.2% of all registrations in 2005 and 56.5% in 2004. In addition, Volvo and Iveco are present on the German coach market, albeit with a smaller market share. The market investigation showed also that, in recent years, new players (VDL and Temsa) have been significantly increasing their market position. In these circumstances, and taking into account the general characteristics of coach markets (described in the context of Sweden), the Commission does not consider that the proposed concentration is likely to lead to non-coordinated or coordinated effects and to significantly impede effective competition in the German coach market.

235. Although registration data suggest that MAN had a market share of 4.7% in Norway in 2005 (1.9% in 2004), the reconstruction of the market in the Commission's market inquiry based on actual sales figures shows that MAN sales accounted for only [0-10%] (2005) and [0-10%] (2004) of the total sales volume for coaches in Norway. The proposed concentration is therefore also not likely to have any significant impact in this Member

State. In any event, there is neither an indication for the occurrence of non-coordinated effects in view of the market position of the two other strong players (DC and Volvo) in the Norwegian coach market nor an indication for coordinated effects taking into account the general characteristics of coach markets (described in the context of Sweden)

236. In Italy and Greece, the merged entity would have a combined registration based market share of approximately 25% (2005). The Commission's market investigation however revealed that Scania, in both countries, has no significant sales of complete coaches. The figures accounted for in the registration data appear to relate to the supply of chassis to body builder. The proposed concentration would therefore not lead to any appreciable addition of market share based on actual sales of coaches. In any event, even if one were to assess the transaction on the basis of registration data (thus treating Scania's chassis sales as sales of complete coaches), it would not be likely to lead to any serious doubts as to its compatibility with the common market: two of the three other major competitors (Volvo, DC, Iveco) have a strong position in the coach markets in Greece and Italy respectively and constitute a sufficient competitive constraint on the merged entity. Additional competition emanates from Temsa (in Italy) and VDL (in Greece and Italy) who are smaller competitors having gained significant ground in recent years. Moreover, in both countries, sales of complete coaches by body builders account for approximately 10% of the total sales volume.

237. In Denmark, the combined registration based market share of the merged entity would be 30% compared to 43.3% of DC and 16.4% by others. In 2005, Volvo accounted only for 1.5% of all registrations whilst in 2004 its share was 33%. This fluctuation is likely to be due to the limited size of the Danish coach market (<100 registrations in 2005 and 2004) as well to the irregular occurrence of larger orders. It nonetheless shows that Volvo is present on the Danish coach market, where also VDL accounts for an increasingly significant position as the Commission's market investigation has shown. In view of these circumstances and taking into account the general characteristics of coach markets (described in the context of Sweden), the Commission does not consider it likely that non-coordinated or coordinated effects arise as a result of the proposed concentration.

238. For the Polish coach market, no official registration data are available. The Notifying Party submitted their estimate that MAN / Scania would become the second strongest player (with a share of [25-30]% in 2005) behind DC with a share of [35-40]%. Volvo would be present with [5-10]%. The market enquiry by the Commission largely confirmed these market share estimates. The actual sales data gathered in the Commission's investigation also show that VDL achieved, in 2005 and 2004, a market share between [15-20]%. In view of this market structure, especially VDL's recent expansion and the general characteristics of coach markets (described in the context of Sweden), the Commission does not consider that there are serious doubts as to the compatibility of the proposed concentration with the common market with respect to the Polish coach market.

239. Also for Slovenia, official registration data are not available. According to the Notifying Party's estimate, DC would have a market share of [50-60]% whilst the combined entity MAN / Scania and others would each have a share of [15-25]% in 2005. The Commission's market investigation showed that the actual sales volume for coaches in Slovenia is low (approximately 50 per year). In each of the past two years (2005 and 2004), DC accounted for more than two thirds of all coaches sold, whilst the combined market share of MAN / Scania was inferior to the above estimate by the Notifying Party. In addition, Temsa accounted for [5-10]% for all coaches sold in Slovenia in 2005 and

2004. On the basis of these facts, the Commission sees no serious doubts as to the compatibility of the proposed concentration with the common market as regards the market for coaches in Slovenia.

(f) Overall conclusion for coaches

240. For all the foregoing reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for coaches and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

5) Chassis for buses

(a) Possible market for supply of chassis to body builders, *including* sales of chassis invoiced to end customers

241. On the basis of the sales figures communicated by the various suppliers of chassis, a possible EEA-wide market for chassis supplies to body builders (*including* chassis invoiced to end customers) would have the following structure: Volvo and Scania are the leading suppliers with a share of [25-35]% respectively of all chassis sales 2005 and 2004. The other major bus / chassis manufacturers are also well-established on the market: MAN and Iveco both have a share of [10-20]% and DC has a share of [5-15]%. VDL and Dennis (a specialised chassis maker) account for a share of 0-5% respectively.

242. Even if MAN/Scania will become the new leading supplier of chassis to body builders and end customers (two invoice system) in the EEA, the merged entity will still meet a considerable competitive constraint from the other large chassis suppliers, none of them facing significant capacity constraints or any other barrier to expand sales with customers who want to choose their supplier post-merger.

243. The Commission does therefore not consider it likely that the proposed concentration would lead to a significant impediment of competition with regard to the supply of chassis to body builders, *including* sales of chassis invoiced to end customers.

(b) Market for the supply of chassis to body builders (*excluding* sales of chassis invoiced to end customers)

244. On the basis of the sales figures communicated by the various suppliers of chassis, a (narrower) possible EEA market for the supply of chassis to body builders (*excluding* sales of chassis invoiced to end customers) would have the following structure: Volvo is the clear market leader with a share of 50-60% in 2005 and 2004 followed by MAN with [20-30]% and Scania with [5-15]%. VDL accounts for [5-15]% in 2005 and 2004 and the UK-based supplier Dennis for [5-10]% (in 2005) of a market for the supply of chassis to body-builders.

245. Many customers (body builders) indicated that they already source chassis from two or more suppliers and that they would be able to maintain their multi-sourcing strategy, switching to other European chassis suppliers.

246. Although DC and Iveco currently do not have significant sales to body builders, they already are in contact with these through transactions under the Spanish and Portuguese two invoice system (where chassis manufacturer deliver the chassis, paid by the end customer, directly to the body builder) as well as through co-operations where they procure body building services under sub-contracting arrangements. Both DC and Iveco indicated in the market investigation that they could increase their output of chassis in a relatively short timeframe by substantial volumes which would enable them to supply to body builders at a larger scale.

247. In these circumstances, and in view of the strong position of Volvo on the market, the Commission does not consider it likely that the proposed concentration would significantly impede effective competition on the possible market for the supply of chassis to body builders.

(c) Possible separate market for the supply of chassis to end customers in Spain and Portugal

248. Even if it was argued that supplies of chassis invoiced to end customers (essentially in Spain and Portugal) are not in the same market as chassis sales to body builders and form a separate market of its own, no competition concerns would arise as a result of the merger, even if such a market was to be defined national in scope.

249. In Spain, on a so-defined market, Volvo would have a share of [10-20]% in 2005 and 2004, MAN a share of [5-15]%, Scania of [20-30]%, Iveco of [25-35]% and DaimlerChrysler of [10-20]%. Thus, all major chassis manufacturers, each having a dense distribution and service network in Spain (see above), are well-established on the market and capable of constraining the merged entity despite its position as new market leader.

250. In Portugal, the situation is very similar: Volvo would have a share of [25-35]% in 2005 ([10-15]% in 2004), MAN a share of [30-40]% in 2005 and 2004, Scania of [15-25]% in 2005 and 2004, Iveco of [5-10]% in 2005 and 2004 and DaimlerChrysler of [10-15]% in 2005 and [15-25]% in 2004. The combined market share of the merged entity was [45-55]% in 2005 and [50-60]% in 2004. All the manufacturers are well-established in Portugal and can rely on a competitive distribution and service network.

251. As described above in the context of the coach markets, both end customers and body builders (who perform the body work for the end customer) indicated during the Commission's market investigation that they can easily switch suppliers of chassis. In these circumstances, the Commission does not consider it likely that the proposed concentration will give rise to competition concerns on the narrowly defined market for the sale of chassis to end customers in Spain and Portugal.

(d) Possible sub-segmentation of the chassis market

252. The proposed concentration would also not give rise to competition concerns if one were to sub-divide the chassis market in further markets according to the technical characteristics of the chassis (e.g. differentiating between conventional chassis, monocoque and semi-monocoque). During the Commission's market investigation, the major chassis manufacturers indicated that most of them are currently producing and supplying a range of chassis types with different technical characteristics. They compete

against each other in the EEA across the range of possible sub-segments. All major chassis manufacturers further indicated that they could quickly (within a time frame of 6 to 12 months) increase their production of various types of chassis by significant amounts.

(e) Overall conclusion for the market for chassis

253. For all the foregoing reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for chassis and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

C. DIESEL ENGINES

254. In the notification, MAN stated that the horizontal overlaps of MAN and Scania were marginal using any possible sub-division. However, in a submission Scania stated that significant overlaps would arise in certain sub-segments in the market for diesel engines for marine applications. Given the allegations made by Scania, the Commission focused its market investigation as regards diesel engines on diesel engines for marine applications.

255. As regards marine engines between 40-300 kW, MAN estimated its EEA-wide market share in 2005 to [0-5]% and Scania's to [0-5]%. With an estimate of [0-5]%, Scania's estimate of its own market share corresponds well with the figure provided by MAN.[79] According to Scania, the largest competitors in this segment are MAN, Iveco, Volvo Penta, Cummins and Caterpillar. It may safely be concluded that the combined entity's share of the 40-300 kW segment will be marginal. The Commission therefore concludes that the proposed transaction will not lead to a significant impediment to effective competition in this market segment.

256. As regards marine engines between 301 and 1,000 kW, MAN estimated its EEA-wide market share in 2005 to [15-25]% and Scania's to [0-5]%. Other engine manufacturers active in this market segment are Volvo Penta, Cummins, Caterpillar and MTU. With a combined market share of [20-30[%, MAN/Scania would become the second largest producer in the market, after Caterpillar with an estimated EEA-wide market share of [25-35]% in 2005. Other major manufacturers are MTU and Volvo Penta with estimated shares of [15-25]% and [10-20]% respectively. Scania estimates its own share of this product segment to [0-5]%.[80] Adding MAN's and Scania's own estimates results in a combined share of [20-30]%. It may be concluded that the combined entity's share would not exceed 30%. Given the facts that the increment is limited ([0-5] percentage points at most), that there is one competitor with a larger market share and that there are two further competitors with substantial market shares, it may be concluded that the transaction would not lead to the creation or strengthening of a dominant position for MAN/Scania alone. Considering the fact that the market segment is dominated by four competitors in a

79 Scania sub-divides the 40-300 kW segment further into engines for marine commercial, auxiliary and pleasure use. Scania estimates its EEA-wide share in 2005 of the commercial sub-segment to 3.2%, of the auxiliary segment to 4.2% and to 0% of the pleasure segment.

80 Scania sub-divides the 301-1,000 kW segment further into engines for marine commercial, auxiliary and pleasure use. Scania estimates its EEA-wide share in 2005 of the commercial sub-segment to 1.6%, of the auxiliary segment to 8.5% and to 9.7% of the pleasure segment.

fragmented market (a large number of small buyers – shipyards) spread over a large area (at least the EEA) selling heterogeneous products (as regards power output and other features[81]) makes the occurrence of co-ordinated effects most unlikely. It may therefore be concluded that the transaction would not significantly impede effective competition in the 301-1,000 kW market segment.

257. The EEA-wide market for diesel engines for marine applications does not give rise to any competition concerns, even under the narrowest conceivable definition of the relevant product markets. The exact market definition – in particular whether the markets should be defined according to ranges of power output – may ultimately be left open.

258. For all the foregoing reasons, the Commission considers that the proposed transaction does not raise competition concerns on the market for diesel engines and, therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

IX. CONCLUSION

259. The transaction is not likely to create significant competition problems in any of the affected markets and therefore does not give rise to serious doubts as to its compatibility with the common market and the EEA Agreement.

260. 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 (EC) No 139/2004.

For the Commission
signed
Ján FIGEL
Member of the Commission

[81] According to MAN, the most important competitive features of marine diesel engines are the performance per weight ratio, the performance per space ratio, total performance, fuel consumption, price, quality and durability.