

***Case No COMP/M.5086 -
BAT / SKANDINAVISK
TOBAKSKOMPAGNI***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) in conjunction with Article 6(2) –
NON-OPPOSITION
Date: 27/06/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/06/2008
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.5086 – BAT / Skandinavisk Tobakskompagni
Notification of 7 May 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 7 May 2008, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ('the Merger Regulation') by which the undertaking British American Tobacco plc ('BAT', United Kingdom) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the cigarette business of Skandinavisk Tobakskompagni A/S ('STK', Denmark) together with certain roll-your-own tobacco and snus² interests by way of purchase of shares.
2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate the serious doubts identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In the light of these modifications, the Commission has concluded that the notified operation which falls within the scope of the Merger Regulation does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1.

² Snus is a type of smokeless tobacco product taken orally. It is primarily consumed in Norway and Sweden.

I. THE PARTIES

3. BAT manufactures, markets and sells primarily cigarettes and, to a lesser extent, other tobacco products, including cigars, pipe and roll-your-own tobacco ('RYO'), in Europe, the Americas, Asia and other territories throughout the world. BAT's range of cigarette brands includes *Dunhill*, *Lucky Strike*, *Kent*, *Pall Mall*, *Viceroy* and *Vogue*.
4. STK is among Denmark's largest international companies. It is the parent company of a number of subsidiaries engaged in the production and sale of tobacco products and pipes; in the Danish convenience goods trade; and it holds a share in the Tivoli amusement park in Copenhagen.
5. BAT currently holds a non-controlling minority shareholding of 32.35% in STK. By means of the proposed transaction, BAT intends to convert this minority stake in a diversified business into control of a more focussed cigarette business. The assets to be acquired by BAT, hereinafter referred to as the Target, comprise STK's cigarette business and certain RYO and snus interests. STK's cigarette brands include *Prince*, *Petterøe's*, *Rockets*, *Slim Agenda*, *Camelia*, *Corner* and *Main*. The STK Target Business includes the following STK subsidiaries: House of Prince A/S in Denmark and its subsidiaries in Sweden, Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary and Greece, J.L. Tiedemanns Tobaksfabrik AS in Norway and Fiedler & Lundgren AB in Sweden³.

II. THE OPERATION AND CONCENTRATION

6. The notified concentration forms part of an overall unbundling of STK by which BAT will divest its minority stake in STK to Skandinavisk Holding Tobakskompagni A/S ('SH'), which is STK's majority shareholder, and acquire sole control over the Target. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 000 million (€ 14,638.9 million for BAT, € [...] million for Target). The aggregate Community-wide turnover of both BAT and the Target is more than EUR 250 million (€ [...] for BAT, € [...] for the Target). Moreover, they do not achieve more than two-thirds of their respective aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

8. Tobacco products can be divided into five main categories: factory manufactured cigarettes (FMC), roll-your-own and make your own tobacco (together 'RYO'⁴), pipe tobacco, cigars

³ STK will retain the RYO, pipes and pipe tobacco and cigar businesses carried on by STK group companies that are not part of the Target.

⁴ RYO is a semi-finished product offered as a pack of loose tobacco and used in conjunction with paper wrappers with which consumers can roll cigarettes themselves. For Make your Own ('MYO'), a

and smokeless tobacco. FMC account for approximately 90% by value of consumption in the EEA, followed by RYO, cigars, pipe and smokeless tobacco.

9. The proposed transaction will combine the parties' activities in the manufacture and sale of factory made cigarettes ('FMC'), RYO tobacco and snus thus giving rise to horizontal overlaps. The transaction will also combine the parties' activities in the wholesale distribution of third party tobacco products in a limited number of Member States.

1. RELEVANT MARKETS

A. Relevant product markets

(i) Factory made cigarettes (FMC)

10. The notifying party submits that there is a single relevant product market for all FMC as none of the characteristics of FMC (e.g. brand, flavour, blend, price or taste) is significant enough to justify the identification of distinct relevant product markets. In terms of supply-side substitutability, the notifying party submits that the ingredients, methods of production, packaging and product development are essentially similar for all types of FMC.
11. The Commission has in previous decisions concluded that although FMC may indeed be segmented according to a number of different criteria, sub-division or segmentation of the FMC market into narrower product markets according to a particular criterion would in most cases be "*arbitrary and not meaningful*".⁵
12. The market investigation in the present case has generally confirmed that FMC constitute a single product market that is distinct from other tobacco products such as RYO tobacco, pipe tobacco and cigars. Although the majority of manufacturers indicated that they subdivide the FMC market into different segments for internal purposes primarily on the basis of price, other criteria such as blend, taste and size may also be taken into account. Segmentation by price is also common amongst retailers although not amongst distributors.

(ii) Roll-your-own tobacco (RYO)

13. The notifying party submits that there is a separate market for RYO, including Make Your Own tobacco ('MYO'), which is distinct from the FMC market. Although RYO tobacco, like FMC, is available in various different blends and types, the notifying party further submits that none of the numerous characteristics of RYO tobacco is sufficiently pronounced to justify the definition of a product market narrower than RYO tobacco.

stuffing/injection machine (hand-held or desktop) and an empty filter cigarette tube are used. An MYO cigarette normally looks more like a manufactured cigarette than a RYO cigarette.

⁵ Case IV/M.1415, *BAT/Rothmans*; Case M.2779, *Imperial Tobacco/Reemtsma Cigarettenfabriken*; Case M.3191, *Philip Morris/Papastratos*; Case M.4581, *Imperial Tobacco/Altadis*.

14. The market investigation in the present case has confirmed the distinctions between FMC and RYO tobacco that the Commission has found in previous cases and that consequently a distinct product market exists for RYO tobacco. At the same time, tobacco manufacturers acknowledged there could be a degree of switching between FMC and RYO tobacco in view of differing excise treatment, as RYO tobacco is generally taxed more favourably than FMC in the European Union⁶, and consumer preferences.

(iii) Smokeless tobacco products including snus

15. The Commission has not had cause to consider smokeless tobacco products such as snus, chewing tobacco, tobacco bits and snuff in previous cases. In contrast to other tobacco products such as FMC, RYO, cigars and pipe tobacco that are smoked by consumers, smokeless tobacco is taken orally (snus, chewing tobacco, tobacco bits) or inhaled (snuff).

16. Snus is a finely-ground or cut moist tobacco that comes in loose portions or in small sachets, which are placed under the lip. It comes in different blends and may be flavoured. Chewing tobacco is placed under the lip or in the jaw, between the cheek and the gum and is sold in two forms: loose leaf and plug form. Tobacco bits comprise small pellets of tobacco which are used in a similar way to snus. Snuff consists of aromatic ground tobacco powder which is inhaled through the nose.

17. The parties' activities in smokeless tobacco overlap only in snus. The notifying party submits that as the proposed transaction would not lead to any affected market, even if potential product markets were to be considered for each of loose snus and portion snus, the precise market definition may be left open.

18. Respondents in the market investigation broadly agreed that smokeless tobacco products should be considered as forming a distinct product market in view of demand and supply side considerations. The market investigation was not conclusive as to whether narrower potential product markets should be distinguished within the smokeless tobacco category and the basis on which this should be done. For the purposes of the present case, however, the exact product market definition can be left open as the proposed concentration would not give rise to competition concerns irrespective of the market definition considered and these products are not considered further.

(iv) Wholesale distribution of tobacco products

19. The Commission has suggested in previous cases that there is a market for the wholesale distribution of manufactured tobacco products that should be distinguished from the distribution of non-tobacco goods primarily because of regulatory and fiscal reasons.⁷ This

⁶ In the case of Norway, where Community legislation on the taxation of tobacco products does not apply, it should be noted that the issue of distinct excise treatments for FMC and RYO tobacco is less acute given that the Norwegian authorities adopted measures in 2004 to align the tax treatment for each. In 2003, Norway applied an excise duty of 1.74 NOK per cigarette and 1.2 NOK per gramme of RYO tobacco. In 2004, the rates were aligned at 1.77 NOK per cigarette and 1.77 NOK per gramme of RYO. Since that date, the annual increase in excise duty has been applied equally to both cigarettes and RYO tobacco. The rate applying since 1 January 2008 is 1.92 NOK per cigarette or gramme of RYO tobacco.

⁷ Case No. COMP/M3553 *Logista/Etinera/Terzia* (with regard to Italy) and Case No. COMP/M.1735 *SEITA/Tabacalera* (with regard to France and Spain)

view was confirmed by the market investigation in the recent *Imperial Tobacco /Altadis*⁸ case.

20. The notifying party in the present case agrees with the Commission's findings in *Imperial Tobacco/Altadis* and submits that, for the purposes of assessing the proposed concentration, the relevant product market is the market for the wholesale distribution of third party tobacco products.
21. The majority of distributors responding to the market investigation also distribute goods other than tobacco products. For the purposes of the present case, however, the question whether the relevant product market should be defined as to comprise also the wholesale distribution of third-party non-tobacco products can be left open as this would not alter the competitive assessment.

B. Relevant geographic market

22. The notifying party submits that the markets for all types of tobacco product as well as the wholesale distribution of third party tobacco products are national. This is in line with the Commission's decisional practice and has been confirmed by the market investigation. As the price level of FMC is significantly higher in Norway compared to neighbouring countries a significant part of consumption is purchased by consumers abroad, notably from Sweden⁹. However, no respondents in the market investigation were of the opinion that this specific cross border trade was such as would make the relevant geographic market any broader than national.

2. COMPETITIVE ANALYSIS

(A) FMC

23. As noted above, the proposed transaction will result in overlaps between the parties' activities in FMC, RYO and snus. However, the only horizontally affected markets are those for FMC where the transaction would give rise to 15 such affected markets as shown in the following table.

⁸ Case No COMP/M.4581 *Imperial Tobacco/Altadis*

⁹ The tobacco use survey referred to in "Norwegian Tobacco Statistics 1973-2006" published by the Norwegian Directorate of Health indicates that in 2006, 58% of cigarettes consumed by respondents in the previous 24 hours were purchased in Norway, 24% in Sweden, 5% in Denmark and 14% elsewhere (i.e. tax-free sales).

Table 1: Market shares of the parties and their main competitors in the affected FMC markets

Country	BAT	Target	Combined entity	PMI*	JTI*	Imperial*	Others
Cyprus	[60-70]	[0-5]	[60-70]	[20-30]	[5-10]	[0-5]	[0-5]
Czech Republic	[10 -20]	[5-10]	[20-30]	[50-60]	[5-10]	[10-20]	[0-5]
Denmark	[0-5]	[80-90]	[80-90]	[5-10]	[0-5]	[0-5]	[0-5]
Estonia	[5-10]	[10-20]	[10-20]	[40-50]	[20-30]	[5-10]	-
Germany	[10-20]	[0-5]	[10-20]	[30-40]	[0-5]	[20-30]	[10-20]
Greece	[10-20]	[0-5]	[10-20]	[40-50]	[10-20]	[5-10]	[20-30]
Hungary	[40-50]	[0-5]	[40-50]	[30-40]	[0-5]	[10-20]	[0-5]
Latvia	[5-10]	[30-40]	[30-40]	[40-50]	[20-30]	[0-5]	[0-5]
Lithuania	[5-10]	[10-20]	[10-20]	[50-60]	[20-30]	[0-5]	-
Luxembourg	[10-20]	[0-5]	[10-20]	[30-40]	[10-20]	[20-30]	[10-20]
Netherlands	[20-30]	[0-5]	[20-30]	[40-50]	[10-20]	[10-20]	[5-10]
Poland	[10-20]	[10-20]	[30-40]	[30-40]	[5-10]	[20-30]	[0-5]
Sweden	[0-5]	[30-40]	[30-40]	[30-40]	[30-40]	[0-5]	[5-10]
Iceland	[10-20]	[0-5]	[10-20]	[30-40]	[50-60]	[0-5]	-
Norway	[10-20]	[50-60]	[60-70]	[20-30]	[0-5]	[0-5]	-

Source: Form CO, parties' estimates based on volumes.

Notes: * PMI = Philip Morris International, JTI = Japan Tobacco International (figures include Gallaher acquired in 2007), Imperial = Imperial Tobacco Limited (figures include Altadis acquired in 2008).

24. In the case of the Czech Republic, Estonia, Germany, Greece, Lithuania, Luxemburg and Iceland, the market shares of the merged entity will remain below 25% and therefore the proposed concentration is not likely to impede effective competition in these markets.¹⁰ In five other instances, Cyprus, Denmark, Hungary, the Netherlands and Sweden, the increment arising from the transaction is limited at less than 1.5% and as such the proposed transaction is not expected to bring about any significant change to the competitive structure of the market in any of these countries.

¹⁰ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, paragraph 18.

25. As to Latvia and Poland, the increment is more substantial. The merged entity will however continue to face strong competitive pressure from the market leader, Philip Morris, as well as other international tobacco companies such as Japan Tobacco and Imperial Tobacco. Moreover, the market investigation has not shown any concerns relating to either of these markets. Consequently, the proposed transaction is not likely to impede effective competition in Latvia and Poland.

Norway

26. In Norway the Target's existing market-leading position of [50-60%] would be strengthened by the addition of BAT's [10-20%]. As a result, the merged entity would have a market share of [60-70%] which would be more than two and a half times greater than its nearest competitor, Philip Morris which has a market share of [20-30%] and many times larger than that of the other two competitors on the market, Imperial Tobacco ([0-5%]) and Japan Tobacco ([0-5%]).

27. Concerns were raised in the market investigation that the merged entity would enjoy a very strong position in the FMC market in Norway. In addition, concerns were expressed that the merged entity would also be dominant in the Norwegian RYO market with a share in excess of [85-95%] although the proposed transaction would not result in any increment as BAT is not active in this market. It was suggested that the merged entity's portfolio of leading FMC and RYO brands would facilitate its access to key accounts in the retail trade. Respondents in the market investigation also stressed the Target's strong position in providing advice on the management of the tobacco product category to a number of leading retail groups.

28. On the basis of information gathered during the course of the investigation, the Commission considers that the proposed transaction as notified would raise concerns in the market for FMC in Norway as the merged entity would have a strong market position. It is further considered, taking into account the specific characteristics of the market for tobacco products in Norway and the importance of RYO tobacco in terms of overall tobacco consumption, that the merged entity's dominance in the RYO tobacco market would strengthen its position in the FMC market. In spite of the merged entity's high market share in FMC, the notifying party put forward a number of arguments to demonstrate that the proposed transaction would not significantly impede effective competition in the Norwegian FMC market. After due consideration and on the basis of information available, the Commission does not consider that these arguments, which are discussed below, are sufficient to dispel the concerns it has identified.

(i) The parties are not each other's closest competitor

29. The notifying party argued that the parties' main brands are not each other's closest substitutes with the result that the proposed transaction would not remove a key competitive constraint in the market. This would be because BAT's portfolio is based on its global drive brands while the Target's portfolio is made up of a range of Scandinavian brands and traditional Norwegian brands. It submitted a study of recent switching data in the Norwegian FMC market, i.e. of smokers who have switched brands, to support the argument that the parties' brands are not particularly close substitutes.

30. The study submitted by the notifying party does not allow for firm conclusions to be drawn as to whether the parties' brands are the closest substitutes or not for two reasons. First, of the [...] surveyed smokers per year, only around [...] smokers switched brands every year, and thus the number of smokers who switched brands in the period examined was very limited¹¹. Second, there has not been any major re-positioning of brands in Norway in the last three years, and thus relative retail prices of cigarettes have been stable over time. This implies that the switching behaviour is not driven by changes in relative prices, which is a key factor for the competitive assessment. Moreover [...] there may be a closer relationship between [...] and [...] on one hand and [...] on the other than the brands' market shares would imply.
31. The results of the questions posed in the market investigation about the closeness of competition indicate that some of the parties' brands are relatively close. In this respect, a number of respondents indicated that BAT's *Kent* and the Target's *Prince* brands were close competitors although Philip Morris' *Marlboro* brand was cited more often as the closest competitor of each of *Kent* and *Prince*.
32. The notifying party also argued that the existing distribution relationship between the merging parties in Norway or more precisely between it and the Target's Norwegian subsidiary, J. L. Tiedemanns Tobaksfabrik AS ('JLT'), means that competition between them is necessarily softer than between the parties and other competitors. JLT has been responsible for the marketing, sale and distribution of BAT's brand portfolio of what it terms its 'international drive brands' such as *Kent*, *Lucky Strike*, *Pall Mall* and *Dunhill* since the 1930s, most recently under [...]. JLT as a subsidiary of STK is also responsible for the marketing, sale and distribution of the Target's portfolio of traditional or local brands. Prior to this date, it was also responsible for the production, marketing sale and distribution of the Target's *Prince* brand in Norway.
33. According to the notifying party, JLT markets the brand portfolios of BAT and the Target as a single portfolio of complementary brands ('to the point where most retailers are not even aware that the brands are owned by different companies'¹²). It explained that the price increases which JLT negotiates with the trade on behalf of BAT and the Target are [...] and that the proposed transaction will not change the existing dynamics as regards wholesale price negotiation for the parties' brands.
34. It appears that in practice, price revisions for FMC normally take effect on 1 February which is one month after the annual excise increase takes effect. Prior to the price revision taking effect, tobacco manufacturers and distributors issue "price lists" to the trade towards the end of the preceding year which serve as a starting point for negotiations between the tobacco suppliers and their customers. Although JLT offer the parties' brands to the trade as a single portfolio, [...].

¹¹ For example, according to the parties, there were only [...] smokers switching out of [...] and [...] smokers switching into [...] over the three years of the survey.

¹² Form CO, p. 60.

35. On the basis of the information gathered during its investigation, the Commission concludes that some of the parties' brands may be close substitutes. At the same time, the Commission considers that as the proposed transaction would replace the existing purely contractual link between BAT and JLT with a structural one, in the sense that JLT would be fully incorporated into BAT, the proposed transaction would remove an element of the competitive dynamic from the Norwegian market for FMC.

(ii) Countervailing buyer power

36. According to the notifying party, FMC manufacturers and distributors in Norway face a highly concentrated trade side with only four major retail chains, all of which are (directly or indirectly) vertically integrated into wholesaling. These four groups account for over 90% of total FMC sales in Norway and according to the notifying party are able to exercise a significant degree of countervailing buyer power. As a consequence, the margin earned by the trade in Norway would be higher in comparison to the manufacturer's margin than in other European markets.

37. Whilst it is the case that the margin earned by the trade exceeds that earned by the manufacturer, in absolute terms, it should be noted that the manufacturer's gross margin in [...].

38. To support its position of countervailing buyer power the notifying party explained that retail chains have sometimes rejected the price increase proposed by JLT and have [...]. It underlined that [...] it has offered to the trade, for example when it sought to reposition its [...] brand from the [...] segment to [...], were not always [...] as several retailers chose to [...] and thereby [...].

39. The market investigation did not provide any evidence of delisting of FMC products by retailers in the past three years as a result of their dissatisfaction with a price increase proposed by a tobacco manufacturer. In fact, the only reasons given for delisting a tobacco product were poor sales or a decision on the part of the manufacturer to withdraw it from sale. Moreover, it would appear on the basis of information gathered during the course of the investigation that price reductions at wholesale level can be passed on to consumers, albeit with some delay. [...]

40. The results of the market investigation also showed that the merged entity would control four of the five leading FMC brands in Norway. The Target's *Prince* brand is the leading FMC brand in Norway with a [40-50%] market share. The second most important brand in Norway is Philip Morris' *Marlboro* with [20-30%] followed by BAT's *Kent* ([5-10%]), the Target's *Petterøe's* ([5-10%]) and BAT's *Lucky Strike* ([0-5%]). All four of the parties' brands were cited by a number of respondents as 'must have' brands, i.e. brands that a retailer must stock because of consumer demand. This suggests that the merged entity would be in a strong position vis-à-vis the trade during price negotiations. As the market investigation has indicated that the sales negotiation process in Norway typically encompasses all tobacco products in the portfolio of each supplier, the merged entity's negotiating position could be reinforced by its very strong position in RYO tobacco.

41. As regards category management services for tobacco products, the market investigation confirmed that JLT plays a leading role in the provision of these services to major retail

groups in Norway. These services include advice on which FMC brands to stock and how they should be presented in retail outlets.

42. In view of the above considerations, the Commission concludes that the merged entity would have a strong position in the FMC market in Norway, not only in terms of market share but also from the perspective of its portfolio of leading brands and the advisory services it provides to major customers. The Commission therefore considers that any countervailing buyer power in the Norwegian FMC market, to the extent that it may exist, would not be such as to eliminate the concerns it has identified.

(iii) Norwegian excise duties and personal imports

43. Unlike most other European markets where excise duties on FMC consist of an *ad valorem* and specific element, Norway applies only a specific duty (i.e. at a fixed level per cigarette). Consequently, all FMC bear the same amount of duty, currently 1.92 Norwegian kroner per cigarette, with the result that most FMC brands (of the parties and their competitors) are sold by the major retailers to final consumers at the same price (i.e. there is no price continuum as may be the case in markets where *ad valorem* duties, which are calculated as a percentage of the selling price are applied).
44. The market investigation confirmed that until recently, price differentiation has not been a feature of the Norwegian FMC market. The premium segment where retail prices range from 65-71 Norwegian kroner¹³ accounts for approximately 94% of total sales with the value for money segment (NOK 54-65) accounting for 2% of sales and the low-price segment (NOK 52) representing the remainder. In spite of the structure and level of excise duties, the launch of brands outside the premium segment can be seen as evidence of price competition in the FMC market. For example, in 2006 Imperial Tobacco was able to launch a low-price brand *Paramount* and gain a share of more than [0-5%].
45. At the same time, as the incidence of excise duties on FMC in Norway is higher than in many neighbouring countries, a large proportion of FMC consumption in Norway is accounted for by FMC purchased in other markets. The notifying party submitted that this inflow of products applies a constant downwards pull on the Norwegian market. However, as noted above in connection with the definition of the relevant geographic markets in the present case, no respondents in the market investigation were of the opinion that cross border trade was such as would make the relevant geographic market any broader than national. Moreover, there were no indications that tobacco manufactures or distributors take into account retail prices in neighbouring markets when determining their pricing policies for Norway. On the contrary, in addition to passing on annual increases in excise duties to their customers, it appears from the market investigation that tobacco manufacturers and suppliers have been able to pass on increases in their own costs to customers again without reference to neighbouring markets.
46. Although it acknowledges that the incidence of excise duties in Norway may lead a proportion of Norwegian smokers to purchase their FMC outside the domestic duty paid market, the Commission has not found any evidence to support the claim that personal

¹³ Form CO, p.44.

imports from neighbouring countries exert competitive pressure on FMC prices in Norway. The Commission therefore considers that the merged entity would not be constrained to any significant degree by the level of personal imports.

(B) Wholesale distribution of tobacco products

47. The Target is active in the wholesale distribution of third party tobacco products in Norway via its subsidiary JLT for BAT, and to a lesser extent, Swedish Match¹⁴ and in Denmark for BAT, [...].¹⁵ BAT provides certain distribution services (importing and warehousing) to STK in Finland and, in Germany, to STK and [...] (in relation to the [...] brands, which [...]). In Finland and Germany, the parties do not have, individually or combined, a market share of 25% or more in either the upstream FMC market or the downstream distribution market. Therefore, the wholesale distribution of third party tobacco products are not vertically affected markets in those countries. In Norway and Denmark, as the parties have a combined market share in excess of 25% in the upstream FMC market, the wholesale distribution markets are vertically affected.
48. The market investigation did not raise any concerns with regard to the parties' distribution activities. In view of the availability of alternative sources of distribution for third parties, the parties would not have the ability and incentives to engage in foreclosure strategies. Therefore, the concentration is not likely to give rise to a significant impediment to effective competition in the wholesale distribution markets in either Denmark or Norway.

(C) Conclusion

49. The Commission considers that the proposed transaction as notified would raise serious doubts in the market for FMC in Norway where the merged entity would have a market share of [60-70%]. The merged entity's FMC portfolio would include a number of the best-selling brands in Norway. In addition, it would have a dominant position in the RYO tobacco market although the proposed transaction would not result in any market share increment. The merged entity's leading position in the FMC market coupled with its dominant position in RYO tobacco, which remains an important part of the overall tobacco market in Norway, would place it in a strong position vis-à-vis its customers.

V. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

(a) Procedure

50. In order to render the concentration compatible with the common market, the notifying party offered commitments pursuant to Article 6(2) of the EC Merger Regulation on 6 June 2008. After examination and market testing of this commitment package, a final

¹⁴ JLT provides [...] distribution services for Swedish Match in respect of the latter's snus, cigarillo, cigar and pipe tobacco brands in Norway. Swedish Match carries out its own sales and marketing activities for these products through its own sales force.

¹⁵ The third party distribution activities in Denmark are currently undertaken by the STK affiliates, Nordisk Tobaks Kompagni and Orlik Nobel, which do not form part of the Target business. STK will however transfer the relevant distribution contracts to BAT as part of the proposed transaction.

commitment package was submitted on 26 June 2008. The Commission considers that the revised commitments would remedy the competition concerns it has identified. These commitments are attached to this decision and form an integral part thereof.

(b) Description of the commitments

51. The commitments proposed by the notifying party consist of the divestment of a number of the Target's tobacco brands (the 'Divestment Brands'). The Divestment brands are: *Petterøe's*, *Tiedemanns Rød*, *Rockets*, *Blue Master*, *Teddy*, *Mento*, *Mentolett* and *South State*.
52. Each divestment brand essentially includes all tangible and intangible assets (including intellectual property rights ('IPR') and blend formulas) which contribute to its current operation or are necessary to ensure its viability and competitiveness.
53. Each divestment brand will include the exclusive right to use the relevant trademark for its operation by way of an assignment in the relevant territory¹⁶. It should be noted that *Tiedemanns* is the name of the Norwegian subsidiary of the Target which BAT is acquiring as part of the proposed transaction and as such the name is an important element in the goodwill inherent in the Target. *Tiedemanns* is also used in connection with some tobacco brands that will be retained by BAT. Accordingly, BAT will retain ownership of the *Tiedemanns* name, trademark and associated rights ('*Tiedemanns Rights*') for use in its retained and ongoing business and will grant to the Purchaser of the Divestment Brands, to the extent any of those brands include use of the *Tiedemanns Rights*, a royalty-free, perpetual and irrevocable licence to the relevant *Tiedemanns Rights* when used in connection with the relevant Divestment Brand¹⁷.
54. The *Petterøe's* and *Tiedemanns Rød* brands (currently used in relation to both FMC and RYO in Norway and other countries) will be divested to two separate purchasers as part of two separate Divestment Businesses. In each case, the Divestment Business will include all tangible and intangible assets (including 'IPR' and blend formulas) which contribute to its current operation or are necessary to ensure its viability and competitiveness. Each Divestment Business also includes provision for the Purchaser to enter into arrangements if it so chooses with BAT by which the latter will provide manufacturing, marketing and sale support as well as wholesale distribution services for the Divestment Brands on reasonable commercial terms and conditions for a transitional period of up to [...] months after Closing.

¹⁶ The relevant territory comprises Norway, Sweden and Denmark together with any other countries in which the relevant Divestment Brand is currently sold with the exception of *Rockets*. *Rockets* is a semi-slim FMC produced in the Target's Polish factory. In addition to Norway, *Rockets* is sold in Poland, Hungary, Finland and the Baltic countries. The notifying party therefore proposes to divest this brand only in Norway. Moreover, at the Purchaser's request, BAT will contract manufacture this brand for the Purchaser for a period of [...] months from Closing of the divestiture.

¹⁷ The licence will be non-exclusive with respect to the use of the *Tiedemann's* name or device by itself, but exclusive insofar as it relates to the *Rød*, *Teddy* or *Mento / Mentolett* brands.

55. In the case of the [...] sold under the [...] and [...] brands, BAT will use its best endeavours to obtain the consent of the party that currently manufactures these products to partially assign BAT's rights under that agreement to each Purchaser. If such consent is not forthcoming, BAT will enter into a supply agreement with each Purchaser under which it will onward-supply the relevant [...] brand to each Purchaser at cost until the termination of the contract that is due to occur two years from the closing of the notified concentration.

(c) Suitability for removing the serious doubts

56. Considering the respective brand portfolio of the parties and the specific market conditions in Norway, the notifying party proposed a remedy package consisting of all the Target's FMC brands sold in Norway with the exception of *Prince*¹⁸. At the same time, the divestment of FMC brands such as *Petterøe's* and *Tiedemanns Rød* will also entail the divestment of their RYO variant as this would avoid the FMC and corresponding RYO brand being split between two competitors and minimise potential confusion in the market. As noted above, with the exception of *Rockets*, the divestment will cover Norway, Sweden, Denmark and any other countries in which the Divestment Brands are currently sold. The inclusion of these countries into the scope of the remedies is necessary to ensure the viability of the Divestment Brands in providing for a sufficient scale. In addition, as submitted by the notifying party and confirmed by the Commission's market investigation a significant proportion of tobacco products consumed in Norway are purchased outside the domestic duty-paid market. Therefore, a brand split between Norway and its neighbouring countries would increase the risk of brand confusion and put at risk the viability of the Divestment Brands in Norway. At the same time, as the Divestment Brands are in the main viewed as Norwegian in nature (with the exception of *Rockets*) and achieve the major part of their turnover in that country, it is not considered that their divestment in other territories would be disproportionate in the present case in remedying the competition concerns identified.

57. Following the divestment, the merged entity would have a [50-60%] share of the FMC market (instead of [60-70%] without the divestment). The divestment will thus reduce, to a large extent, the increment brought about by the merger in the FMC. In addition, the divestment will considerably reduce the parties' share of the RYO market which is important in the light of the close interaction between these two tobacco markets in Norway as indicated above in paragraphs 28 and 40.

58. The Commission has market tested the proposed commitments with the aim of assessing whether each of the Divestment Businesses is a viable, stand alone entity capable of exerting, post merger, a competitive pressure on the new entity.

59. The market test has confirmed that *Petterøe's* and *Tiedemanns Rød* are well-established brands and are widely available in Norway¹⁹. Although respondents to the market test

¹⁸ As *Prince* is the market leader in Norway with a market share in excess of [35-45%] and is also sold in important volumes in other countries, the Commission considered that its divestment would be disproportionate to remedy the concerns it has identified solely in respect of the Norwegian market.

¹⁹ As indicated in paragraph 39 above, the *Petterøe's* brand is considered by a number of respondents to the market investigation as a 'must-have' brand. The market test indicated that *Tiedemanns Rød* is more widely

indicated that the other Divestment Brands might have limited potential when considered in isolation, it was acknowledged by a number of parties active in the supply of tobacco products that they could be of some interest as part of a broader portfolio of brands. In this regard, one of the major retail groups in Norway indicated that having a wide assortment of brands would make potential Purchasers more attractive as suppliers.

60. There was support in the market test, particularly from other tobacco manufacturers, that the Divestment Brands should cover all tobacco products, e.g. FMC and RYO, as this was considered important to improve their viability. It was also recognised that a divestment in all territories in which the Divestment Brands are currently sold would similarly improve their viability and attractiveness to potential Purchasers. The majority of respondents expressing a view also considered that an [...] period would be sufficient for a Purchaser to establish itself on the market and make alternative arrangements for the continued manufacture and support of the Divestment Brands as necessary.
61. The market test confirmed there would be interest from purchasers in the acquisition of the Divestment Brands. Potential purchasers were considered most likely to be companies already active in the Norwegian tobacco market. As such a Purchaser would already have experience of the market, including contacts with key accounts in the retail trade, this would facilitate the divestment process and ensure that the Divestment Businesses are able to exercise a competitive constraint on the merged entity.
62. In view of the remedies and the reaction of market participants, the Commission finds that the commitments will remove the serious doubts in the Norwegian market for FMC.

(d) Conclusion on the commitments

63. The Commission therefore considers the commitments would remedy the serious doubts as to the compatibility of the concentration with the common market and with the EEA Agreement, which have been established in the previous sections of this Decision.

VI. CONDITIONS AND OBLIGATIONS

64. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
65. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation.

available as a RYO tobacco product than as a FMC but it still has a high degree of penetration in the FMC channel.

The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

66. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Section B, points 1-3 and points 5 and 6 and the Schedule of the final version of the Commitments submitted by the notifying party on 26 June 2008.
67. The remaining requirements set out in the other Sections of the Commitments submitted by the parties are considered to constitute obligations.

VII. CONCLUSION

68. For the above reasons the Commission has concluded that the remedies submitted by the notifying party are sufficient to remove the serious doubts raised by the concentration. Consequently, subject to full compliance with the commitments described above, 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) and Article 6(2) of Council Regulation (EC) No 139/2004.
69. The detailed text of the commitments is annexed to this decision and forms an integral part to this decision.

For the Commission

(signed)

Neelie KROES
Member of the Commission

CASE NO COMP/M.5086 – BAT/Skandinavisk Tobakskompagni

Commitments to the European Commission

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), British American Tobacco plc (“**BAT**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of 100% ownership of the cigarette business of STK together with certain snus and roll your own tobacco (“**RYO**”) interests (the “**STK Target Business**”) by BAT compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision. This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Merger Regulation.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Additional Divestment Brands: Rockets, Blue Master, Teddy, Mento, Mentolett and South State, as further described in the Schedule.

Affiliated Undertakings: undertakings controlled by BAT, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

Associated Assets: as defined in Section B and the Schedule.

BAT: British American Tobacco plc incorporated under the laws of England and Wales, with its registered office at Globe House, 4 Temple Place, London WC2R 2PG, United Kingdom and registered with the Company Register at Companies House under number 03407696.

Closing: the transfer of the legal title of each Divestment Business to its respective Purchaser.

Divestment Businesses: the Divestment Brands and all associated assets comprising the businesses that BAT commits to divest, as further defined in Section B and the Schedule (each respective business defined in the Schedule as a “Divestment Business”).

Divestment Brands: the Petterøe’s Brand, the Tiedemanns Rød Brand and the Additional Divestment Brands, as defined in the Schedule.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by BAT and who has received from BAT the exclusive Trustee Mandate to sell the Divestment Businesses to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months from the Effective Date.

FMC: Factory Made Cigarettes.

Hold Separate Manager: the person appointed by BAT to manage the day-to-day business of a Divestment Business that is held separate pursuant to paragraph 10, under the supervision of the Monitoring Trustee.

JLT: J.L. Tiedemanns Tobaksfabrik AS (currently in the process of changing its name to Tiedemanns Tobak AS), a company registered under the laws of the Kingdom of Norway, with company registration no. 979919042, having its principal place of business at Joh H Andresensvei, 0655 Oslo, Norway.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by BAT, and who has the duty to monitor BAT's compliance with the conditions and obligations attached to the Decision.

Petterøe's Brand: the Petterøe's trademark, as further defined in the Schedule.

Purchaser: with respect to each Divestment Business, the entity approved by the Commission as acquirer of the Divestment Business, in accordance with the criteria set out in Section D.

Relevant Territory: Norway, Denmark and Sweden together with any other countries in which the relevant Divestment Brand is currently sold (with the exception of Rockets as further described in the Schedule).

RYO: Roll Your Own tobacco.

STK: Skandinavisk Tobakskompagni A/S, incorporated under the laws of Denmark, with its registered office at Tobaksvejen 4, DK-2860 Søborg, Denmark and registered with the Company Register at the Central Business Register (*Erhvervs & Selskabsstyrelsen*) under CVR number 83336218.

STK Target Business: the cigarette ("FMC") business of STK together with certain snus and roll your own tobacco ("RYO") interests.

Tiedemanns Rød Brand: the Tiedemanns Rød trademark, as further defined in the Schedule.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] months from the end of the First Divestiture Period.

Section B. The Divestment Businesses

Commitment to divest

1. In order to restore effective competition, BAT commits to divest, or procure the divestiture of, each of the Divestment Businesses by the end of the Trustee Divestiture Period to separate purchasers on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out each divestiture, BAT commits to find, for each Divestment Business, a Purchaser and to enter into a final binding sale and purchase agreement for the sale of such Divestment Business within the First Divestiture Period. If BAT has not entered into such agreement(s) at the end of the First Divestiture Period, BAT shall grant the Divestiture Trustee an exclusive mandate to sell the unsold Divestment Business(es) in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

2. BAT shall be deemed to have complied with this Commitment if, by the end of the Trustee Divestiture Period, BAT has entered into a final binding sale and purchase agreement for each Divestment Business, if the Commission approves the Purchasers and the terms in accordance with the procedure described in paragraph 15 and if the Closing of the sale of each Divestment Business takes place within a period not exceeding [...] months after the approval of the Purchasers and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, BAT shall, for a period of ten (10) years after the Effective Date, not acquire direct or indirect influence over the whole or part of either of the Divestment Businesses, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the relevant Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.
4. In relation to paragraphs 7 to 13, prior to the acquisition of control of the STK Target Business, BAT shall endeavour to cause STK to adhere *mutatis mutandis* to the commitments mentioned in these paragraphs.

Structure and definition of the Divestment Business

5. The Divestment Businesses consist of the following:
 - (i) The Petterøe's FMC and RYO Divestment Business; and
 - (ii) The Tiedemanns Rød FMC and RYO Divestment Business,
 in each case, as further defined in the Schedule. The Divestment Businesses will be divested to two separate Purchasers and will include, in addition to the Petterøe's Brand and the Tiedemanns Rød Brand respectively, such Additional Divestment Brands as may be agreed between the Purchaser and BAT, together with associated assets.
6. Each Divestment Business, described in more detail in the Schedule, includes:
 - a. all tangible and intangible assets (including intellectual property rights and blend formulas), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. This will include the exclusive right to use the Petterøe's, Tiedemanns Rød and Additional Divestment Brand trademarks, for all tobacco products, by way of an assignment of those trademarks in the Relevant Territory²⁰. Further, BAT commits, for a period of [...] years from Closing, that

20 The only exception is with respect to the Tiedemanns name, trademark and associated rights ("Tiedemanns Rights"). Tiedemanns is the name of the Norwegian subsidiary of STK, which BAT is acquiring as part of the notified transaction, and as such the name is an important element in the goodwill inherent in the STK Target Business. Tiedemanns is also used in connection with some of the brands which will be retained by BAT. In order not to jeopardise the validity (under relevant trademark law) of any Tiedemanns Rights, it is important that all users of those rights trace their entitlement back to the same single owner. Accordingly BAT will retain ownership of the Tiedemanns Rights for use in its retained and ongoing business, and will grant to the Purchasers of the Divestment Brands, to the extent any of those brands include use of the Tiedemanns Rights, a royalty-free, perpetual and irrevocable licence to the relevant Tiedemanns Rights when used in connection with the relevant Divestment Brand. The licence will be non-exclusive with respect to the use of the

it will not apply for trademark registration in respect of any of the Divestment Brands in Norway, Sweden or Denmark, or oppose such an application by the Purchaser;

- b. to the extent assignable, all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business; BAT will undertake all acts and provide all information and other support that may be necessary for the transfer of such licences, permits and authorisations to the Purchaser;
- c. all contracts, leases, commitments and customer orders of the Divestment Business. In particular, BAT will use its best endeavours to obtain the consent of [...], which currently manufactures the [...] sold under the [...] brands under the [...]²¹, to partially assign BAT's rights under that agreement to each Purchaser. If such consent is not forthcoming, BAT will enter into a supply agreement with each Purchaser under which it will onward-supply the relevant [...] brand to each Purchaser at cost until termination of the contract;
- d. all customer, credit and other records of the Divestment Business;
- e. the benefit, for a transitional period of up to [...] after Closing and on reasonable commercial terms and conditions, of all arrangements under which BAT or Affiliated Undertakings supply brand marketing services for the Divestment Business (including, advice and assistance with respect to the brand management of the Divestment Brands), as detailed in the Schedule, unless otherwise agreed with the Purchaser;
- f. the benefit, for a transitional period of up to [...] after Closing and on reasonable commercial terms and conditions, of arrangements under which BAT or Affiliated Undertakings supply sales support and wholesale distribution services for the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser; and
- g. the benefit, for a transitional period of up to [...] after Closing and on cost-based commercial terms, of arrangements under which BAT or Affiliated Undertakings supply contract manufacturing services for the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 7. From the Effective Date until Closing, BAT shall preserve the economic viability, marketability and competitiveness of each Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular BAT undertakes:

Tiedemann's name or device by itself, but exclusive insofar as it relates to the Rød, Teddy or Mento / Mentolett brands. See further 5 (b) in the Schedule.

²¹ A contract manufacturing agreement entered into between [...] and [...], dated [...]

- a. not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; and
- b. to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans.

Hold-separate obligations of BAT

8. BAT commits, from the Effective Date until Closing, to keep the Divestment Businesses separate from the businesses it is retaining and to ensure that the Hold Separate Manager has no involvement in any business retained and vice versa.
9. Until Closing, BAT shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as a distinct and saleable entity separate from the businesses retained by BAT. BAT shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Businesses, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Businesses independently and in the best interest of those businesses with a view to ensuring their continued economic viability, marketability and competitiveness and its independence from the businesses retained by BAT.

Ring-fencing

10. BAT shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses. BAT may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or whose disclosure to BAT is required by law.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, BAT shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, provide to potential purchasers sufficient information as regards the Divestment Businesses.

Reporting

12. BAT shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. BAT shall inform the Commission and the Monitoring Trustee about the preparation of any data room documentation and the due diligence procedure and shall submit a copy of an information

memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchasers

14. In order to ensure the immediate restoration of effective competition, the Purchaser of a Divestment Business, in order to be approved by the Commission, must:
 - a. be independent of and unconnected to BAT;
 - b. have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with BAT and other competitors;
 - c. neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the relevant Divestment Business

(the before-mentioned criteria for the Purchasers hereafter the “**Purchaser Requirements**”).

15. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When BAT has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. BAT must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the relevant Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of a Divestment Business without one or more Assets, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

Section E. Trustee

I. Appointment Procedure

16. BAT shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If BAT has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by BAT at that time or thereafter, BAT shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have

nor become exposed to a conflict of interest. The Trustee shall be remunerated by BAT in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of a Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by BAT

18. No later than one week after the Effective Date, BAT shall submit a list of one or more persons whom BAT proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, BAT shall submit a list of one or more persons whom BAT proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
 - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - b. the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - c. an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, BAT shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, BAT shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by BAT

20. If all the proposed Trustees are rejected, BAT shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom BAT shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or BAT, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by BAT with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - a. monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Business from the business retained by BAT, in accordance with paragraphs 7 and 8 of the Commitments;
 - b. supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 9 of the Commitments;
 - c. (i) in consultation with BAT, determine all necessary measures to ensure that BAT does not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses and (ii) decide whether such information may be disclosed to BAT as the disclosure is reasonably necessary to allow BAT to carry out the divestiture or as the disclosure is required by law;
 - d. monitor the splitting of assets between the Divestment Businesses and BAT or Affiliated Undertakings;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to BAT such measures as the Monitoring Trustee considers necessary to ensure BAT's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, potential purchasers receive sufficient information relating to the Divestment Business in particular by

reviewing, if available, the data room documentation, the information memorandum and the due diligence process;

- (vi) provide to the Commission, sending BAT a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending BAT a non-confidential copy at the same time, if it concludes on reasonable grounds that BAT is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price any Divestment Business that remains unsold to a Purchaser, provided that the Commission has approved the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of BAT, subject to BAT's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to BAT.

III. Duties and obligations of BAT

- 26. BAT shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of BAT's, its Affiliated Undertakings' or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and BAT shall provide the Trustee upon request with copies of any document. The Trustee shall agree

in writing to keep any confidential information and business secrets disclosed to it in confidence, except to the extent necessary to perform its duties hereunder. BAT shall make available to the Trustee one or more offices on its premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

27. BAT shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. BAT shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. BAT shall inform the Monitoring Trustee of possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. BAT shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, BAT shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. BAT shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to BAT for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of BAT, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to BAT approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should BAT refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard BAT. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture period, the Divestiture Trustee may use advisors who served BAT during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient Sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - a. The Commission may, after hearing the Trustee, require BAT to replace the Trustee; or
 - b. BAT, with the prior approval of the Commission, may replace the Trustee.

32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16 – 21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from BAT showing good cause and accompanied by a report from the Monitoring Trustee:
 - (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where BAT seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall BAT be entitled to request an extension within the last month of any period.

SIGNED by Alec Burnside, Linklaters LLP

Duly authorised for and on behalf of British American Tobacco plc

Schedule

The Divestment Businesses

Further to Section B of the Commitments, the following describes the Divestment Businesses.

The Divestment Businesses consist of the exclusive rights to the Divestment Brands for all tobacco products in the Relevant Territory, together with all Associated Assets. As set out in Section A of these Commitments, the Relevant Territory refers to Norway, Sweden and Denmark together with any other countries in which the relevant Divestment Brand is currently sold.²² The Associated Assets are described in paragraph 5 below.

The trademarks to be included in the Divestment Businesses are those listed in Annexes A and B, and the following points apply:

- (i) The Purchaser shall have the right to use the relevant trademarks for all tobacco products, regardless of the extent to which the trademark is currently used by STK;
- (ii) The country of registration of the relevant trademarks is listed in the Annexes. For certain of the Divestment Brands, the relevant trademark rights are limited to one or more countries within the Relevant Territory and the rights to be transferred are therefore limited accordingly;
- (iii) BAT commits, for a period of [...] years after Closing, that it will not apply for trademark registration in respect of the Divestment Brands in Norway, Sweden and Denmark, or oppose such an application by the Purchaser.

Petterøe's Divestment Business

1. The Petterøe's Divestment Business consists of the exclusive rights to the Petterøe's Brand in the Relevant Territory and all Associated Assets, together with any Additional Divestment Brands in the Relevant Territory and Associated Assets as may be agreed between BAT and the Purchaser.

The Petterøe's Brand refers to the Petterøe's trademarks as listed in Annex A, which are currently used on products sold by STK in the following product and geographic markets:

Brand name	Product market	Geographic market
Petterøe's	FMC	Norway, Sweden
Petterøe's	RYO	Norway, Finland, Sweden, Denmark, Germany

Tiedemanns Rød Divestment Business

²² Note an exception in relation to Rockets, which is divested exclusively in Norway.

2. The Tiedemanns Rød Divestment Business consists of the exclusive rights to the Tiedemanns Rød Brand in the Relevant Territory and all Associated Assets, together with any Additional Divestment Brands and Associated Assets as may be agreed between BAT and the Purchaser.

The Tiedemanns Rød Brand refers to the Tiedemanns Rød trademarks as listed in Annex B, which are currently used on products sold in the following product and geographic markets:

Brand name	Product market	Geographic market
Tiedemanns Rød	FMC	Norway
Tiedemanns Rød	RYO	Norway, Sweden

3. As explained in paragraph 5 of these Commitments, for the avoidance of doubt, the Petteroe's Divestment Business and the Tiedemanns Rød Divestment Business will be sold to separate Purchasers.

Additional Divestment Brands

4. The Additional Divestment Brands will be split between the Petteroe's Divestment Business and the Tiedemanns Rød Divestment Business according to the outcome of negotiations between BAT and the Purchaser of each Divestment Business. Those brands, to which the Purchaser(s) will acquire exclusive rights in the Relevant Territory, are currently used on products sold in the following product and geographic markets:

Brand name	Product market	Geographic market
Rockets	FMC	Norway ²³
Blue Master	FMC	Norway
Teddy	FMC	Norway
Mento	FMC	Norway
Mentolett	RYO	Norway, Sweden
South State	FMC	Norway
South State	Snus	Norway

The trademarks relating to the Additional Divestment Brands appear in Annexes A and B.

5. Following paragraph 5 of these Commitments, each Divestment Business includes, but is not limited to, the following Associated Assets:

²³ Rockets is also sold in certain other countries, including Poland, Hungary, Finland and the Baltics. Rights to the Rockets brand outside of Norway are excluded from the divestiture commitment.

- a. All tangible assets exclusively related to the Divestment Business, including the warehouse stock, finished products, raw and pack materials, outstanding product orders from suppliers and in-store communication materials;
- b. The following intangible assets used in the operation of the Divestment Business:
 - The exclusive right to use the trademarks listed in Annex A for all tobacco products, by way of an assignment of the relevant trademarks in the Relevant Territory.
 - All other intellectual property rights necessary for the operation of the Divestment Business. These intellectual property rights include know-how, blend formulas and design rights relating to the packaging of the products at the date of Closing.
 - By way of limitation to the general principle that rights shall be assigned, the following applies in relation to the Tiedemanns name, trademark and associated rights (“Tiedemanns Rights”). Tiedemanns is the name of the Norwegian subsidiary of STK, which BAT is acquiring as part of the notified transaction, and as such the name is an important element in the goodwill inherent in the STK Target Business. Tiedemanns is also used in connection with some of the brands which will be retained by BAT. In order not to jeopardise the validity (under relevant trademark law) of any Tiedemanns Rights, it is important that all users of those rights trace their entitlement back to the same single owner. Accordingly BAT will retain ownership of the Tiedemanns Rights for use in its retained and ongoing business, and will grant to the Purchaser(s) of Teddy, Mento, Mentolett and Rød (which make use of the Tiedemanns Rights) a royalty-free, perpetual and irrevocable licence to the relevant Tiedemanns Rights, as listed in Annex B, for use in connection with those brands.²⁴
- c. All licences, permits and authorisations necessary for the operation of the Divestment Business: BAT will undertake all acts and provide all information and other support that may be necessary for the transfer of such licences, permits and authorisations to the Purchaser.
- d. All purchase orders, contracts, agreements and other obligations exclusively related to the Divestment Business. BAT will use all reasonable efforts to obtain the consent of any third party to any purchase order, contract, agreement or other obligation exclusively used in the Divestment Business, which consent is required for the assignment of any such purchase order, contract, agreement or other obligation from BAT to the Purchaser.
- e. BAT will use its best endeavours to obtain the consent of [...], which currently manufactures the [...] sold under the [...] brands under the [...] ²⁵ to partially assign

²⁴ The licence will be non-exclusive with respect to the use of the Tiedemann's name or device by itself, but exclusive insofar as it relates to the Rød, Teddy or Mento / Mentolett brands.

²⁵ The contract manufacturing agreement entered into between [...] and [...], dated [...].

BAT's rights under that agreement to each Purchaser. If such consent is not forthcoming, BAT will enter into a supply agreement with each Purchaser under which it will onward-supply the relevant [...] brand to each Purchaser at cost until termination of the contract.

- f. Copies of all the books, records and other documents necessary for the operation of the Divestment Business (including, without limitation, customer and supplier lists and files, distribution lists, mailing lists, sales materials, operating, production and other manuals, plans, files, specifications, process drawings, computer programs, data and information, manufacturing and quality control records and procedures, market research and intelligence, advertising and promotional materials), provided that BAT may redact from such copies any information that does not relate to the Divestment Business;
 - g. The benefit for a period of up to [...] after Closing and on reasonable commercial terms and conditions of arrangements under which BAT or Affiliated Undertakings supply brand marketing services for the Divestment Business (including advice and assistance with respect to the "brand management" of the Divestment Brands), unless otherwise agreed with the Purchaser;
 - h. The benefit, for a transitional period of up to [...] after Closing and on reasonable commercial terms and conditions of arrangements under which BAT or Affiliated Undertakings supply sales support and wholesale distribution services for the Divestment Business, unless otherwise agreed with the Purchaser; and
 - i. The benefit, for a transitional period of up to [...] after Closing and on cost based commercial terms, of arrangements under which BAT or Affiliated Undertakings supply contract manufacturing services for the Divestment Businesses, unless otherwise agreed with the Purchaser.²⁶
6. If there is any asset which would not be covered in the above list but which is both used exclusively in the operation of the relevant Divestment Business and necessary for the continued viability of the relevant Divestment Business, then that asset will be offered to potential purchasers. If there is any asset which would not be covered in the above list but which is both used (but not exclusively) in the operation of the relevant Divestment Business and necessary for the continued viability of such Divestment Business (a "Shared Asset"), then BAT will offer such Shared Asset or adequate substitute, unless otherwise agreed with the Purchaser.
7. The Divestment Businesses shall not include:
- (a) Assignment of or licence to any future patents, trademarks or other intellectual property rights to be filed by BAT and/or Affiliated Undertakings after the Effective Date;

²⁶ The Rockets brand has a non-standard format (semi-slim, 40 pack) and is manufactured [...]. At the Purchaser's request, BAT will provide contract manufacturing to the Purchaser for Rockets for a period of [...] from Closing of the divestiture, which may be extended by the Purchaser, provided appropriate commercial terms can be agreed.

- (b) Trademark licences or assignments for territories other than the Relevant Territory identified in Section A of the Commitments. For the avoidance of doubt, the Divestment Businesses shall not include duty free sales in outlets located outside of the Relevant Territory.
- (c) Rights to use the Tiedemanns name other than in connection with Teddy, Mento / Mentolett and Rød tobacco products sold by the Purchaser in the Relevant Territory.

Trademarks To Be Assigned²⁷

[...]

²⁷ As regards International Trademarks, these will be assigned to the Purchaser exclusively in the Relevant Territory.