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*Case No IV/M.522 -  
Scandinavian Project*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/11/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.11.1994

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

**Subject: Case N° IV/M.522 - Scandinavian Project**  
**Notification of 29.9.1994 pursuant to Article 4 of Council Regulation N° 4064/89**

1. On October 26, 1994, Kooperativa Förbundet (KF), Svenska Lantmännen Riksförbund (SLR), Atle Förvaltnings AB (Atle), Bure Förvaltnings AB (Bure), Allmänna Pensionsfonden 4:e fondstyrelsen (AP4), Svenska Handelsbanken (SHB) and Skandia (Skandia) jointly notified four transactions, in each of which the notifying parties will acquire joint control of a company which previously was wholly controlled by KF. SLR is a contracting party to one transaction only while the rest of the parties mentioned are parties to all transactions. In all transactions, Atle, Bure, AP4, SHB and Skandia collaborate as a group of investors and exercise collectively their controlling interest in the companies involved. The transactions notified concern the acquisition of joint control respectively of Karlshamns AB, BT Industries AB, Gislaved Folie AB and Elmo-Calf AB.
2. After examination of the notification, the Commission has concluded that the notified transactions constitute concentrations falling within the scope of Council Regulation N° 4064/89. These concentrations do not raise serious doubts as to their compatibility with the common market and with the functioning of the EEA Agreement.

## **I. THE PARTIES**

### Acquiring Companies

3. KF is the central organization of Swedish consumer cooperatives. According to KF:s 1993 Annual Report, KF has more than 100 cooperative member societies. KF is primarily active in retail trade of foodstuffs and other convenience goods. The companies whose shares are partially disposed of by KF in the operations concerned belong to Nordico AB, a group of industrial companies wholly owned by KF, that mostly deal with external customers.
4. SLR is a holding organization owned by 13 Swedish regional farmers' cooperatives; it has five business areas: agriculture, mill and bakery operations, marketing of machinery, sale of energy (biofuels) and production of feedstuffs.
5. Atle is a Swedish investment company whose business strategy is to invest indirectly - through other venture capital organizations - in small and medium-sized Swedish companies. Atle has a number of such indirect investments.
6. Bure is a Swedish investment company which currently has interests in the engineering industry and in the production of certain foodstuffs (confectionery).
7. AP4 is the fourth board of the Swedish General Pension Fund which is a public organization whose activity consists of investing pension funds for various profitable purposes. According to the Swedish law, the General Pension Fund is organized into five independent entities (Boards) each of which has its own independent board of directors. It is stated in the preparatory documents of the Swedish legislation in question that the boards must operate independently. Only the fourth board and the fifth board are allowed to invest in shares of companies and comparable securities. The notifying parties have confirmed to the Commission that there is no coordination of activities between the fourth and fifth pension fund board.
8. Svenska Handelsbanken is a Swedish group of companies which carries on all kinds of banking services. The particular company belonging to the group that is a party to the operations concerned is Svenska Handelsbanken Livförsäkringsbolag,
9. Skandia is a Swedish group of companies which carries on life assurance, non-life insurance and reinsurance. The particular company belonging to the group that is a party to the operations concerned is Livförsäkringsbolaget Skandia.

### Acquired Companies

10. Karlshamns AB is a Swedish company whose primary business is the production of vegetable oils for the food processing, the cosmetics and pharmaceutical industries, and for final consumption.
11. BT Industries AB is a Swedish company whose primary business is the manufacture of electric and manual lift trucks which are used in material handling within companies.

12. Gislaved Folie AB is a Swedish company whose primary activity is the manufacture of plastic materials which are used by the automotive industry as coverings of cars' interior and by the furniture industry.
13. Elmo-Calf AB is a Swedish company which produces high-quality leather that is used by car and furniture industries.

## **II. THE OPERATIONS**

14. As far as Karlshamns AB is concerned, shares and voting rights are divided between the notifying parties in the following manner: KF 42%, SLR 33%, Atle 8.6%, Bure 7.6%, Skandia 4.9%, AP4 2.9%, SHB 1.0%. The ownership of Karlshamns AB is arranged by the notifying parties through Kelar Holding AB which is used to acquire all the shares in Karlshamns AB from KF's industrial group Nordico AB. The division of shares and voting rights stated above are related to the joint ownership of Kelar Holding AB. The control of the activities of Karlshamns AB is carried out through Kelar Holding AB.
15. As far as BT Industries AB, Gislaved Folie AB and Elmo-Calf AB are concerned, voting rights are divided in the following manner: KF 47.0%, Atle 20.7%, Bure 18.4%, AP4 7.0%, Skandia 4.6% and SHB 2.3%. The notifying parties use AB Grundstenen to acquire all the shares in these companies. The division of voting rights stated above are related to the joint ownership of AB Grundstenen. The control of the activities of these companies is carried out through AB Grundstenen.

## **III. THE CONCENTRATIONS**

16. The notifying parties have concluded four transactions involving a passage from sole to joint control; all of the resulting joint ventures have a concentrative character within the meaning of the Merger Regulation.

### Joint control

17. In the case of Karlshamns AB, it is stipulated in the shareholders' agreement that Kelar Holding AB's Board shall comprise no more than six members, out of whom Nordico and SLR shall each be entitled to appoint two members while the investors jointly are entitled to appoint two members. The agreement provides that such major decisions as [...] <sup>1</sup>, must be adopted by the unanimous consent of all board members. In addition, Atle, Bure, AP4, Livförsäkringsbolaget Skandia (the life assurance company of the Skandia Group) and Handelsbanken Liv Försäkringsbolag (the life assurance company within the SHB Group) have concluded an investors' agreement by which they have established a jointly owned and controlled Swedish company Nordic Capital Svenska AB (Newco). According to the agreement, [...] <sup>2</sup>. Taking into consideration the right of KF and SLR to appoint Board members and the decision-making rules of this Board, the Commission concludes that Karlshamns AB is under

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<sup>1</sup> Business secrets deleted. Certain major decisions that usually confer joint control upon the parties within the meaning of the Merger Regulation.

<sup>2</sup> Business secrets deleted. Through Newco, the investors shall unanimously decide upon the appointment of the two joint members of the Board.

the joint control of all the relevant notifying parties, KF, SLR, Atle, Bure, AP4, Skandia and SHB.

18. In the case of BT Industries AB, Gislaved Folie AB and Elmo-Calf AB, the relevant shareholders' agreements each provide that the Board of AB Grundstenen shall comprise no more than five members. Out of these members, the investors are jointly entitled to appoint three members and KF through Nordico AB two members. Major decisions concerning [...] <sup>3</sup> must be adopted by the unanimous consent of all board members. In addition, the establishment through an investors' agreement of Newco and the relevant provisions of that agreement stated above concern the collaboration of Atle, Bure, AP4, Skandia and SHB in the control of BT Industries AB, Gislaved Folie AB and Elmo-Calf AB as well. The Commission concludes that BT Industries, Gislaved Folie AB and Elmo-Calf AB are all jointly controlled by all of the notifying parties.

#### Full Function Entities

19. Karlshamns AB, BT Industries AB, Gislaved Folie AB and Elmo-Calf AB are all going concerns that do business primarily with customers and suppliers independent of the notifying parties. The Commission concludes that the companies stated above are full-function joint ventures.

#### Absence of Coordination

20. The parents of the joint ventures are not active on the markets on which the joint ventures operate. Neither are the joint ventures themselves operating on the same markets. There is therefore no potential for coordination arising from the transactions notified.

### **IV. COMMUNITY/EEA DIMENSION**

21. The notifying parties have concluded four transactions involving passing from sole to joint control; all of the resulting joint ventures have a concentrative character within the meaning of the Merger Regulation. Article 5(2), second subparagraph, of the Merger Regulation provides that two or more transactions that take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the last transaction. Of the four transactions stated above, the one concerning Karlshamns AB was concluded between KF, SLR, Atle, Bure, AP4, SHB and Skandia. The rest of the transactions, those concerning BT Industries AB, Gislaved Folie AB and Elmo-Calf AB, were concluded on the same date between KF, Atle, Bure, AP4, SHB and Skandia, i.e. between the same parties, resulting in exactly the same division of voting rights in the target companies between the parties. Therefore, the Commission concludes that the four transactions concerned constitute only two concentrations within the meaning of the Merger Regulation, that concerning Karlshamns AB on the one hand and that concerning BT Industries AB, Gislaved Folie AB and Elmo-Calf AB on the other.

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<sup>3</sup> Business secrets deleted. Certain major decisions that usually confer joint control upon the parties within the meaning of the Merger Regulation.

22. Both concentrations have a Community dimension as specified in Article 1(2) of the Merger Regulation: In both cases the combined aggregate worldwide turnover of all undertakings concerned is more than ECU 5000 million. In both cases, the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than ECU 250 million. In neither case do each of the undertakings concerned achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.
23. Both concentrations proposed constitute co-operation cases under the EEA Agreement since the combined turnover of the undertakings concerned in the territory of the EFTA States is in both cases in excess of 25% of their total turnover within the EEA.

## **V. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA AGREEMENT**

### *A. Transaction concerning Karlshamns AB*

#### Relevant markets

24. The notifying parties delineate three major activity areas on which Karlshamns AB is active:
- the production of vegetable oils to be used by the food-processing, pharmaceutical and cosmetics industries and vegetable oils destined for final consumption
  - the production of fatty acids and glycerol
  - the production of rape-based lubricants for industrial purposes
25. Karlshamns AB is active, first and foremost, on Swedish markets but it does operate in various EC member countries as well and does have some particularly high market shares in some EFTA-countries and in the EFTA-area as a whole.
26. The industries stated above use vegetable oils to achieve a desired consistency, energy value, texture, flavour or nutritional value for their own products. Similar vegetable oils are used by households as well. The raw material used by Karlshamns AB to produce the vegetable oil is mostly rape. Swedish farmers owning SLR produce the rape seeds out of which the oil is obtained by crushing. Farmers sell the seeds to a State organization which pays a guaranteed price for them. Karlshamns AB obtains its rape raw materials partly as crude rape oil and partly as rape seeds. It purchases the crude rape oil from Svenska Oljeextraktion AB, a 50/50 joint venture between Karlshamns AB and Unilever Sverige AB. Karlshamns AB buys the rape seeds from the state organization. Thus, while the farmers owning SLR produce the rape raw material, no direct vertical link between SLR and Karlshamns AB arises. Karlshamns AB has a very high market share on the Swedish markets, [...] <sup>4</sup> but in other Nordic countries its market share is in the range of [...] <sup>5</sup> and even less in the EC member countries. Both industry and final consumers have substitutes at their disposal, particularly those based on animal feed. It is not, however, necessary to

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<sup>4</sup> Business secrets deleted. More than 50%.

<sup>5</sup> Business secrets deleted. Less than 10%.

delineate relevant product and geographical markets to which the vegetable oil business of Karlshamns AB belongs to as there is no horizontal overlap nor vertical link between the parents and Karlshamns AB. As Karlshamns AB's market shares do not increase, the transaction does not by itself strengthen Karlshamn AB's strong market position on the Swedish market for these vegetable oils.

27. Fatty acids and glycerol are produced from tallow, palm oil, rape seed oil, soya bean oil or crude soap lye glycerine. The raw materials are byproducts of food products or soap. Fatty acids and glycerol are used mainly as raw materials for various branches of the chemical industry. Various petroleum-based derivatives may in many cases be substituted for fatty acids and glycerol in these industries. Karlshamns AB has a particularly high market share in Sweden [...] <sup>6</sup> and in Finland [...] <sup>6</sup> and in EFTA-markets as a whole [...] <sup>7</sup> but its share on the markets of EC member countries is significantly smaller [...] <sup>8</sup>. The delineation of relevant product and geographical markets may be left open for reasons already stated.
28. Lubricants made of vegetable raw materials may be used in industry as hydraulic oil, chain saw oil and cutting fluids or oils in metalworking applications; These products face substitute competition from more traditional, mostly petroleum-based or synthetic products. The share of vegetable-based lubricants is a minimal part of the total use of lubricants. For this reason and the reasons stated above it is not necessary to delineate the extent of the relevant product and geographical markets to which vegetable-based lubricants by Karlshamns AB belong to.

*B. Transaction concerning BT Industries AB*

29. BT Industries AB is active in the development, production, and marketing of battery-powered electric support arm trucks that are used in the internal materials handling of various industrial and trading concerns. If this type of truck is regarded as a separate relevant product market, BT Industries AB ranks as the third-largest producer within the EEA markets with a market share of [...] <sup>9</sup>, after Jungheinrich group [...] <sup>10</sup> and Linde group [...] <sup>11</sup>. On the Nordic markets BT Industries AB has the largest market share (Sweden [...] <sup>12</sup>, Norway [...] <sup>12</sup>, Finland [...] <sup>12</sup>, Denmark [...] <sup>12</sup>). Electric support arm trucks are likely to face competition from other kinds of trucks, notably counterbalanced trucks. The delineation of relevant product and geographical markets may be left open, as there is no horizontal overlap nor vertical link between BT Industries AB and its parents and therefore no increase of market shares in any potentially relevant market. The transaction concerning BT Industries AB therefore does not by itself create or strengthen a dominant market position.

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<sup>6</sup> Business secrets deleted. Between 40 and 70%.

<sup>7</sup> Business secrets deleted. Between 30 and 45%.

<sup>8</sup> Business secrets deleted. Less than 15%.

<sup>9</sup> Business secrets deleted. Between 10 and 20%.

<sup>10</sup> Business secrets deleted. Between 30 and 40%.

<sup>11</sup> Business secrets deleted. Between 30 and 40%.

<sup>12</sup> Business secrets deleted. Between 25 and 60%.

### C. *Transaction concerning Gislaved Folie AB*

30. Gislaved Folie AB is active in the production and marketing of PVC and ABS/PVC films and foils, and quite recently ASA and PP films and foils. Gislaved Folie AB's products are used in the car industry in dash boards, sun visors and door linings of cars. Gislaved's products are used by industrial customers to laminate steel, chipboards, plywood or gypsum board as well (the decor market). Gislaved Folie AB also produces PVC-tape which is used by carpet factories to weave plastic carpets (the weaving market). Gislaved Folie AB is active mostly on the Nordic markets. It has high market shares in the automotive sector ([...] <sup>13</sup> in EFTA, [...] <sup>14</sup> in Sweden), in the decor market ([...] <sup>15</sup> in EFTA, [...] <sup>16</sup> in Sweden) and in the weaving market [...] <sup>17</sup> in EFTA). Its market shares in the EC member countries are minimal (with the exception of the decor market/ [...] <sup>18</sup> is not necessary to delineate the relevant product and geographical markets to which Gislaved Folie AB's various products belong to as there is no horizontal overlap nor vertical links between Gislaved Folie AB and its parents and therefore no increase of market shares. The transaction concerning Gislaved Folie AB does not by itself create or strengthen a dominant market position.

### D. *Transaction concerning Elmo-Calf AB*

31. Elmo-Calf AB's produces mainly high-quality leather which is used in the furniture industry and car industry. Elmo-Calf AB also produces split which is a byproduct of high-quality leather production but the latter is of lesser economic importance. Elmo-Calf AB is active both in the EFTA countries and in the EC member countries. The notifying parties regard as the relevant product market that for high-quality covering for the furniture and car industries. To the extent that leather and PVC-materials produced by Gislaved Folie AB could be used by the car industry, there might be some possibility for coordination between Elmo-Calf AB and Gislaved Folie AB. In the present case, however, the potential scope for coordination is insignificant since Elmo-Calf AB and Gislaved Folie AB basically produce different car components. Elmo-Calf AB produces leather, first and foremost, to be used in car seats while Gislaved Folie AB's materials are mostly used in other car components (see above). Defined in this manner, competition from other materials would constrain the share of leather products. It is not necessary, however, to further delineate relevant product and geographical markets as there is no horizontal overlap nor vertical links between Elmo-Calf AB and its parents and therefore no increase in market share.

## VI. CONCLUSION

32. The absence of horizontal overlaps and vertical links between the parents and the joint ventures implies that the four transactions notified do not by themselves create

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<sup>13</sup> Business secrets deleted. Between 40 and 50%.

<sup>14</sup> Business secrets deleted. More than 50%.

<sup>15</sup> Business secrets deleted. Between 45 and 55%.

<sup>16</sup> Business secrets deleted. More than 60%.

<sup>17</sup> Business secrets deleted. More than 85%.

<sup>18</sup> Business secrets deleted. Less than 10%.



or strengthen a dominant market position as a result of which effective competition would be significantly impeded in the EEA market. Therefore the Commission has decided to declare the four transactions, which constitute two concentrations within the meaning of the Merger Regulation(see paragraph 21) , compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation N° 4064/89 and Article 57 of the EEA Agreement.

For the Commission