

*Case No IV/M.625 -
Nordic Capital /
Transpool*

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/08/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.08.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case N° IV/M.625 - Nordic Capital/Transpool

Notification of 25.07.1995 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 25 July 1995 Atle AB (Atle), Investment AB Bure (Bure), Almänna Pensionsfonden, 4:e (AP4:e), Svenska Handelsbanken (SHB), Skandia (Skandia), Electra Investment Trust Plc. (Electra), AB Fortos (Fortos) and KF Invest AB (KF) jointly notified a transaction whereby they will acquire joint control of the company Transpool AB (Transpool).
2. After examination of the notification, the Commission has concluded that the notified transaction constitutes a concentration falling within the scope of Council regulation N° 4064/89. The concentration does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA agreement.

I. THE PARTIES

Investor companies

3. Atle is a Swedish investment company whose business strategy is to invest directly as well as indirectly - through other venture capital organizations - in small and medium-sized Swedish companies. Atle has more than 70 such investments of which most are in

companies with less than 500 employees. Investments are spread over a large range of sectors such as food, leisure, wastehandling, engineering and information technology.

4. Bure is a Swedish investment company which currently has interests in the engineering industry and in the production of food (confectionery).
5. AP4:e 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 Swedish law, the General Pension Fund consist of five independent entities (Boards) each of which has its own board of directors. The parties have confirmed to the Commission that only the fourth and the fifth board are allowed to invest in shares of companies and comparable securities, and that there is no coordination of the activities of the fourth and fifth board. Moreover, AP4:e is by law allowed to have at most 10% of the voting rights in a particular company.
6. Svenska Handelsbanken is a Swedish banking group with a universal range of banking services. The company in the group which is a party to the operation is Svenska Handelsbanken Livförsäkringsbolag.
7. Skandia is a Swedish group of companies which is active in life assurance, non-life insurance and reinsurance. The company in the group which is a party to the operation is Livförsäkringsbolaget Skandia.
8. Nordic Capital Svenska AB (Nordic Capital) is an investment company jointly controlled by Atle, Bure, AP4:e, SHB and Skandia, since each party has veto rights concerning the management decisions. Nordic Capital structures and recommends structural investments and buy-outs to its parent companies. It is the main vehicle used by the investors to carry out the transaction.
9. Electra is a British investment trust specializing in long term equity investments in private companies, principally in Europe and the USA.

Current owner companies

10. KF is the central organization of a group of Swedish consumer cooperatives. According to KF's 1994 Annual Report, KF has more than 100 cooperative member societies. KF is primarily active in food and convenience goods retailing.
11. Fortos is a wholly owned subsidiary of Volvo, the Swedish industrial conglomerate which has its main activities in automotives. The activities of Volvo outside its core automotive business are held in the Fortos group of companies (air transport, tourism, pharmaceuticals, beverages etc.).
12. KF and Fortos jointly control the company Borgtornet AB (Borgtornet) which hold 100% of the shares of Transpool. In addition to Transpool, Borgtornet also has interests in hotel and cruise ship operations.

Target companies

13. The target company of the operation is Transpool. The activities of Transpool are organized in two wholly owned subsidiaries: Transwede Airways AB (Transwede) and NRT Nordpool AB (Nordpool). Transwede is an airline with scheduled airline flights, charter flights and air freight services. It is the second largest airline in Sweden (after SAS). Nordpool is one of the largest Scandinavian travel agencies with its main activities in the leisure market for package tours.

II. THE OPERATION

14. Nordic Capital and Electra will inject new capital into Transpool in the form of a convertible subordinated loan. Electra will be represented in the operation by Nordic Capital. However, Nordic Capital will need the approval of Electra in decisions concerning Transpool.
15. The investors have an option to convert the convertible subordinated loan to a 50% share holding in Transpool, at the latest by mid-1996. The investors can exercise the option at their own discretion. The loan will have to be repaid at the middle of 1996, if the investors decide not to convert. However, it is the intention to convert the loan in the first half of 1996 (see below).

III. THE CONCENTRATION

Joint control

16. In return for the convertible subordinated loan the investors will have four out of eight board members. KF and Fortos will each have two. A majority is required for decisions by the board of Transpool. However, for key strategic decisions as well as for other important issues like dividend policy and major capital expenditure unanimity by the board is required. Transpool will therefore be jointly controlled by Fortos, KF, Nordic Capital (Atle, Bure, AP4:e, SHB, Skandia, and Electra).
17. The management structure following the capital injection will give the parties joint control over Transpool. Although for the time being the investors simply provide a loan which first in one year may be turned into a shareholding, the acquisition of joint control has to be considered as taking place on a lasting basis. First, the option to convert the convertible subordinate loan is exclusively an option of the investor companies. Secondly, the structure of joint control will not change materially in the event where the investors decide to exercise their option of conversion of the convertible subordinate loan to equity capital. Thirdly, the investors will appoint four out of eight board members. Fourthly, the investors have already participated in the appointment of the new management team. Fifthly, the new management team will over the next year be making long term decisions like the acquisition of new aircrafts. These decisions have at least a 3-5 year time horizon and will be crucial for the long term perspectives of Transpool. It would not be economically viable to reverse these decisions in a years time. The new management team has in that connection prepared extensive documentation used in the decision of the investor companies to participate in the current operation. Sixthly, the investment

strategies of Nordic Capital and Electra are normally to take a long term interest in the companies in which they invest. It should in this context also be noted that Nordic Capital has already participated in a similar deal involving KF (see case IV/M.522 - Scandinavian Project). These elements are indicative of the long term nature of the engagement of the investor companies in Transpool. The parties have informed the Commission that the acquisition of joint control by the investors have only been structured in this way for corporate reorganisation and accounting purposes, and they have confirmed to the Commission that it is their intention to make the new structure permanent and that the investors have a long term perspective. Therefore, the control structure of the joint venture can be considered as being established on a lasting basis.

Full function on a lasting basis

18. Transpool will basically continue to be active as an airline and a travel agency. One of the main purposes of the operation is to achieve better coordination between the operations of the two existing companies Transwede (the airline) and Nordpool (the travel agency). The acquisition of joint control does not change anything in this respect, and the joint venture is therefore full function.

Absence of coordination

19. Volvo and KF will continue to have some leisure activities in the company Borgtornet, but outside Transpool. These activities notably consist of cruise ship operations and the Reso hotel chain. The Reso hotels mainly focus on the business traveller market. They are mainly situated in central locations in the bigger cities in Sweden and Norway. The hotel operations of Borgtornet are therefore only marginally related to the hotel operations of Nordpool, which are mostly resort hotels outside Scandinavia. However, there is in any case no risk of coordination of the parent companies activities, since the investor companies have confirmed to the Commission that they neither have sole nor joint control nor any material interest in any companies in the markets of Transpool. There is therefore no potential for coordination arising from the transaction notified.

Conclusion

20. The operation involves a change of joint control by two parties to joint control by three parties of Transpool. The resulting joint venture has a concentrative character within the meaning of the Merger Regulation.

IV. COMMUNITY DIMENSION

21. The concentration has a Community dimension as specified in Article 1(2) of the merger Regulation. The undertakings concerned have an aggregate worldwide turnover of more than ECU 10 billion, which is above the ECU 5 billion requested by in the Merger Regulation. AP4:e (ECU 423 million), SHB (ECU 6343 million), Fortos (ECU 8942 million, includes Volvo), KF (ECU 3469 million) and Nordpool (ECU 375 million) all have a Community-wide turnover of more than ECU 250 million. Skandia, Fortos (including Volvo) Nordpool do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same member state.

22. The concentration does not constitute a case which has to be jointly assessed by the Commission and the EFTA Surveillance Authority under the EEA Agreement, since the combined turnover of the undertakings concerned in the territory of the EFTA States is less than 25% of their total turnover within the EEA, and only one undertaking concerned (Fortos with an EFTA wide turnover of ECU 537 millions (including Volvo)), has a turnover exceeding ECU 250 millions in the territory of the EFTA states.

V. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA AGREEMENT

A. Relevant product markets

According to the parties the following relevant product markets can be defined for this operation:

Scheduled flight market

23. Scheduled flight services are the market for regular international and domestic line flights. Transwede is active as a domestic carrier in Sweden and with services to London. Transwede is the second largest domestic carrier in Sweden (SAS is the largest).

Charter flight market

24. Charter flight services are mainly leisure flights, often sold as part of a package tour. Transwede is one of the largest charter flight operators in the Nordic area.

Air freight market

25. Transwede is the second largest operator in Sweden in this market (after SAS).

Package tours market

26. Nordpool sells package tours with points of departure in Sweden, Finland, Norway and Denmark. Nordpool is the largest pan-Nordic tour operator of package tours with about one third of the market.

Hotel operations markets

27. Nordpool is a hotel operator, mainly of tourist hotels. This activity is closely related to its activities as a package tour operator (see above). Hotel accommodation is normally part of the package of a package tour.

B. Relevant geographic market

28. The parties consider the product markets in question either to be Nordic or national. However, the market definitions can be left open, since there are no market share additions on the relevant markets (see below).

C. Assessment

29. The operation will lead to no change of the market structures of the markets affected by the operation, because the investors are not active on any of the above markets. There is therefore no addition of market shares, and accordingly no need to assess the market positions of the joint venture further from this perspective.
30. There will be no reduction in potential competition through the operation, since the investor companies are financial investors investing in the restructuring of a company, and they have had no particular interest in the markets of Transpool before the operation.
31. The operation will therefore not create or strengthen a dominant position.

VI. ANCILLARY RESTRAINTS

32. The notifying parties have agreed to a non-competition clause pursuant to which Fortos, KF, Borgtornet and the investors agree for a period of two years, that neither Transpool nor any of its subsidiaries will enter the business travel agency business. Transpool is at the moment not active on the market for business travellers.
33. The non-competition clause relates to a recent sale by Fortos and KF of a Swedish business travel agency. As part of the sales agreement Fortos and KF made a non-compete undertaking in order to protect the assets of the business travel agency from competition from Fortos and KF. The present non-competition clause is an incorporation of an almost identical non-competition clause demanded by Fortos and KF in order to avoid a breach of the non-competition clause relating to the sale of the business travel agency. However, the present non-competition clause does not aim at guaranteeing the transfer of the full value of the target companies, but rather aims at protecting a third party against competition from Transpool in the business travel agency market. It is accordingly not directly related to the operation and not necessary for its implementation. It is therefore not ancillary and may instead be subject to an assessment under Article 85 of the Treaty.

VII. CONCLUSION

34. The notified operation amounts to a capital injection with an ensuing change of the control structure. However, the operation will not lead to an addition of any market shares and therefore not to any change of market structure in the markets of the joint venture. The operation will therefore neither create nor strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA market.

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)b of Council Regulation No 4064/89.

For the Commission,