

EN

***Case No COMP/M.6267 -
VOLKSWAGEN / MAN***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/09/2011

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EUROPEAN COMMISSION

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Brussels, 26.9.2011
C(2011) 7016 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6267 - Volkswagen / MAN
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 22 August 2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by the German undertaking Volkswagen AG ("VW" or "the Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the German undertaking MAN SE ("MAN") by way of purchase of shares.² (VW and MAN are designated hereinafter as the "parties to the proposed transaction" or simply "the Parties".)

I. THE PARTIES

2. VW is a German-listed undertaking mainly engaged in the development, manufacturing, selling, and distribution of motor vehicles. Through its different vehicle brands like Audi, Porsche, Seat, it is active worldwide. VW also controls Scania, a manufacturer and distributor of heavy trucks and buses. In 2010, [...] % of Scania's worldwide revenues were generated from the manufacture and distribution of heavy trucks. Buses accounted for [...] %, diesel engines for [...] %, and the sale of second-hand vehicles for approximately [...] %.

¹ OJ L 24, 29.1.2004, p. 1 ("the EU Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 253, 30.8.2011, p.8.

3. *MAN* is a publicly traded company headquartered in Munich, Germany. It produces commercial vehicles, engines and mechanical engineering equipment, supplying trucks, buses, diesel engines, turbo machinery, as well as special gear units also on a worldwide basis. In 2010, *MAN* generated around [...] % of its worldwide revenues through the manufacture and distribution of trucks. Buses accounted for [...] % and diesel engines for [...] %.³

II. THE TRANSACTION

4. On 6 and 9 May 2011, VW increased its holding in the voting rights in *MAN* from 29.9% to 30.47% and its holding in the overall share capital in *MAN* from 28.7% to 29.2%. Crossing the threshold of 30% of the voting rights, German takeover law required VW to launch a mandatory public bid for the shares. The offer document was published on 31 May 2011 following its approval by the German Federal Financial Supervisory Authority. As a result of the offer, which ended on 29 June 2011, VW acquires 55.9 % of the voting rights and 53.71 % of the share capital in *MAN*. The total purchase price for the shares acquired under the mandatory offer is EUR 3.416 billion.

III. CONCENTRATION

5. It follows that the notified operation constitutes a concentration within the meaning of Article 3 (1) (b) of the EU Merger Regulation.

IV. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (VW: EUR 127 billion; *MAN*: EUR 14 billion). Each of them has an EU-wide turnover in excess of EUR 250 million (VW: EUR [...] billion, *MAN*: EUR [...] billion), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the EU Merger Regulation.

V. COMPETITIVE ASSESSMENT

Introduction

7. The proposed transaction leads to a number of horizontal overlaps between the activities of the Parties particularly with respect to the development, manufacture and distribution of heavy-duty trucks, military trucks, buses, chassis for buses, engines, and ancillary activities⁵. However, only the activities in (i) heavy-duty trucks; (ii) buses; (iii) chassis for buses; and (iv) diesel engines give rise to affected markets.

(A) *Heavy trucks*

³ Diesel engines sold by *MAN Diesel & Turbo* account for [...] % of *MAN*'s worldwide revenues; however, these diesel engines do not belong to the same product market as diesel engines sold by *Scania*.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ These include financial leasing, operating leasing, vehicle rent, sales of spare parts, repair and maintenance, etc.

Relevant product market

8. In line with previous Commission decisions⁶, the Notifying Party submits that trucks fall into three different product markets depending on the truck's weight: (i) the light-duty segment (gross weight below 5 tonnes), (ii) the medium-duty segment (5-16 tonnes), and (iii) the heavy-duty segment (above 16 tonnes). The market investigation has confirmed this market definition⁷. On that basis, VW/Scania and MAN only overlap in the manufacture of heavy-duty trucks ("heavy trucks")⁸.
9. The Commission has previously considered further sub-segmenting the market for heavy trucks into rigid and tractor trucks⁹. Rigid trucks are "integrated" trucks with a single body, while a semi-trailer can be added to the top back of the tractor truck cabin. In some decisions, the Commission adopted the view that such a further segmentation is not appropriate¹⁰. The Notifying Party shares that view. This has also been confirmed by the market investigation. The great majority of the responding competitors and customers have indicated that rigid and tractor heavy trucks do not constitute separate product markets¹¹.
10. Furthermore, in its previous decisions the Commission has also concluded that different technical characteristics of heavy trucks (e.g. power of the engine, number of axles, type of cabin, emission reduction technologies, etc) do not justify a narrower segmentation¹². The Notifying Party again shares that view.
11. The vast majority of customers which responded to the market investigation also confirmed this. They also considered that there had been no relevant changes in the heavy truck procurement market since the 2006 *MAN/Scania* decision¹³. In addition, the market

⁶ COMP/M.5157 – Volkswagen/Scania, para. 12, COMP/M.4336 – MAN/Scania, paras. 15 and 16.

⁷ See replies to Questionnaire to Truck Competitors (Question 6) and Questionnaire to Truck Customers (Question 5).

⁸ VW only produces cars and light commercial vehicles below 7.5 tonnes. Scania only manufactures and markets trucks above 16 tonnes. MAN offers trucks in the small to medium and heavy weight segment (7.5 to 50 tonnes).

⁹ COMP/M.5157 – Volkswagen/Scania, para. 13, COMP/M.4336 – MAN/Scania, paras. 17-22, COMP/M.1980 – Volvo/Renault V.I., para. 15, COMP/M.1672 – Volvo/Scania, para. 25.

¹⁰ COMP/M.4336 – MAN/Scania, para. 19, COMP/M.1980 – Volvo/Renault V.I., para. 15. However, later in COMP/M.5157 – Volkswagen/Scania, para. 13 the Commission left open the question whether this sub-segmentation should be made.

¹¹ Some customers have indicated that the typical end-use applications of rigid and tractor heavy trucks may to some extent differ (e.g. rigid trucks would typically be used for distribution while tractor trucks would typically be used for long-distance transport). However, the Commission considers that this does not in itself justify to find separate product markets for rigid and tractor heavy trucks, but rather suggests possible product market segments according to the different heavy truck end-uses (see para. 12).

¹² COMP/M.4336 – MAN/Scania, paras. 20-21.

¹³ Customers and competitors generally pointed out that since 2006 the main changes in the heavy truck market concerned (i) the general economic downturn, which resulted in a demand decrease; and (ii) higher environmental standards, which are reflected in the implementation of stricter emission reduction regulations, namely the Euro 5 norm, since 1 October 2008.

investigation confirmed that the other main heavy truck manufacturers (Daimler, DAF, Iveco and Volvo/Renault) are generally able to offer trucks with all main required technical characteristics. In particular, as regards emission reduction technologies, the market investigation confirmed the findings of the *MAN/Scania* decision. Indeed, the two main emission reduction technologies (EGR¹⁴ and SCR¹⁵) are regarded as interchangeable from a demand-side perspective. From a supply-side perspective, both technologies (which are not proprietary) are available to the main heavy truck producers. Therefore, the market for heavy trucks should not be further sub-divided according to the technical characteristics of the truck, including a possible distinction between trucks using different emission reduction technologies.

12. As regards their end-use, heavy trucks are utilised for long-haul transport, distribution and construction haulage as well as for specialty purposes, such as in airports rescue, municipal services, fire fighting and transportation of hazardous goods. Users of long-haul trucks may put an emphasis on larger cabins and stronger engines and tend to use tractor type trucks. Trucks used for distribution tend to be rather rigid trucks and users would focus more on price. Construction trucks are typically rigid trucks and would differ on the number of axles and their specific body adapted to the customer's need. Specialty trucks would use similar chassis to the ones used in common trucks, to which body-builders would add special requirements.
13. Until now the Commission has not specifically analysed whether the heavy truck market should be further sub-segmented according to the truck end-use. The Notifying Party claims that such a sub-segmentation would not be appropriate since (i) the chassis is largely the same for all segments; (ii) the main differences occur regarding the body-building of the truck and this is usually outsourced; and (iii) all trucks are ultimately built according to certain customized specifications.
14. Most respondents during the investigation however confirmed that the end-use application largely determines the technical requirements of the customers, making these trucks from their perspective not interchangeable. However, the customisation of trucks and the competitors' ability to produce all types of trucks indicate that there may actually not be appropriate to sub-segment the heavy truck market according to the truck end-use. Ultimately for the assessment of this transaction, the question whether the different end-uses belong to separate product markets can be left open as this sub-segmentation would not affect the competitive assessment.
15. The Notifying Party also submits that military trucks belong to a market distinct from the truck market for civil use. This is in line with Commission precedents¹⁶ and has been confirmed by the market investigation¹⁷.

¹⁴ EGR = Exhaust Gas Recirculation. EGR is a self-contained technology which is directly fitted to the engine without auxiliary components.

¹⁵ SCR = Selective Catalytic Reduction. SCR is a system by which emissions are after-treated by means of a chemical solution (urea). The technology includes components that are fitted to the chassis, including a separate tank for the urea additive. The use of the SCR technology requires building up an infra-structure for the distribution of the additive.

¹⁶ COMP/M.4336 – MAN/Scania, para. 24.

Relevant geographic market

16. While in *Volvo/Scania*¹⁸ and *Volvo/Renault*¹⁹ the Commission decided that the geographic scope of the heavy truck market was national, the Commission has in other cases subsequently left open the question whether the market is national, regional or EEA-wide²⁰.
17. The Notifying Party submits that the geographic market for heavy trucks is EEA-wide. It argues, for example, that (i) national preferences and technical requirements have become less significant as barriers to cross-border supply; (ii) producers often supply the same type of heavy truck in many different EEA countries; (iii) cross-border trade within the EEA has significantly increased; (iv) transportation costs do not represent a material obstacle to trade; and (v) on the buying side there is an ever-growing importance of large fleet customers, who increasingly use centralized purchasing strategies.
18. Even though for example technical requirements appear to be largely uniform across the EEA, there are a number of elements in the market investigation suggesting that the markets for heavy trucks are probably still national in scope. For instance, prices, rebates and the brand reputation of the different producers still differ per country in various instances, the majority of customers still procure at national level, and the structure of the market in the individual Member States differ considerably.
19. In the present case, the question whether the geographic market of the heavy truck market is national, regional or EEA-wide can be left open as the merger would not raise competition concerns even assuming national markets.
20. As regards military trucks, the Notifying Party considers the relevant geographic markets still to be national in scope, which is in accordance with the Commission precedent decisions²¹. The market investigation has confirmed this view. Therefore, the Commission considers the markets for military trucks to be national in scope.

Competitive Assessment

Non-coordinated effects

¹⁷ The Commission has previously left open the question whether military on-road and off-road trucks would constitute separate segments - COMP/M.4336 – MAN/Scania, para. 25. This question may be left open, as the only country where both Parties sold heavy military trucks over the last 5 years was Germany (2009 was the only year where both Parties had sales) and the German public procurement office (“Bundesamt für Wehrtechnik und Beschaffung”) showed no competition concerns.

¹⁸ COMP/M.1672 – Volvo/Scania, para. 31 *et seq.*

¹⁹ COMP/M.1980 - Volvo/Renault V.I., para. 20 *et seq.*

²⁰ COMP/M.4336 – MAN/Scania, para. 44; and COMP/M.5157 – VW/Scania, para. 24.

²¹ COMP/M.4336 – MAN/Scania, para. 47, COMP/M.4288 – Saab/EMW, para. 40.

(a) The EEA

21. In the EEA the heavy truck market is characterised by the presence of six main producers in practically all EEA Member States: DAF, Daimler AG ("Daimler"), Iveco, MAN, VW/Scania and Volvo/Renault ("Volvo")²². Following the merger, the number of main players will be reduced from six to five. With a market share of roughly 29% the merged entity would become the market leader for heavy trucks at EEA level followed by Volvo with 24% and Daimler with 21%.
22. According to the Notifying Party's submission, non-coordinated effects in this market could be excluded because, as discussed in *MAN/Scania*²³, (i) the merged entity would face fierce competition from other strong competitors who have fully developed EU-wide service networks; and (ii) the Parties are not each other's closest competitors. The Notifying Party also argues that the main four competitors have significant spare capacity and that many of the ever-growing important large fleet customers source from at least two suppliers, are particularly price sensitive and very knowledgeable of the market.
23. At the national level the Commission's market investigation focused on the impact of the proposed transaction in the EEA countries where, assuming that they constitute relevant geographic markets, market shares would be high for the merged entity. The market structure in the EEA and EEA countries where the Parties reach a combined market share of more than 35% is summarized in the following table:

Table 1: Market Structure Heavy Trucks (% , 2010)

Source: Notifying Party, based on registration data of national authorities

Country	VW/Scania	MAN	Combined	Daimler	Volvo	DAF	Iveco
EEA	13.38	16.06	29.43	21.21	24.44	15.5	8.52
Austria	11.86	35.14	47	17.17	15.44	13.87	6.37
Czech Republic	17.4	17.91	35.32	17.81	16.92	20.87	5.79
Denmark	22.97	20.92	43.89	12.44	24.98	15.25	3.26
Estonia	24.46	17.65	42.11	20.43	29.72	6.19	0.93
Finland	39.83	4.61	44.44	15.36	33.42	3.42	1.95
Germany	8.8	27.25	36.05	37.32	10.33	11.56	4.55
Iceland	26.92	15.38	42.31	30.77	3.85	19.23	3.85
Norway	38.92	7.48	46.40	12.96	36.41	3.01	1.06
Sweden	41.78	3.43	45.2	8.37	43.75	1.94	0.2

24. The market structure segmented per heavy truck end-use in the EEA and EEA countries where the Parties reach a combined market share of more than 35% is summarized in the following table:

²² The overlap between the Parties in the area of trucks is confined to MAN and Scania.

²³ COMP/M.4336 – MAN/Scania, paras. 61-93.

Tables 2-4: Market Structure Heavy Trucks per End-use (% , average 2008-2010)

Source: Notifying Party, based on delivery data of OEM²⁴

Long-haul							
Country	VW/Scania	MAN	Combined	Daimler	Volvo	DAF	Iveco
EEA	15.88	14.25	30.13	11.76	28.15	20.52	9.43
Austria	12.35	26.90	39.25	13.24	17.10	24.44	5.96
Denmark	23.51	18.30	41.81	8.38	31.21	12.67	5.93
Estonia	35.55	9.90	45.45	25.53	25.42	0	3.60
Finland	44.54	3.96	48.50	6.43	31.14	7.35	6.59
Germany	11.41	26.58	37.99	22.73	13.25	18.35	6.67
Greece	38.23	9.42	47.65	3.77	24.67	21.28	2.64
Iceland	20.83	25.00	45.83	25.00	29.17	0	0
Ireland	42.67	6.72	49.39	14.79	21.27	14.55	0
Norway	44.09	9.11	53.20	9.43	29.44	6.45	1.48
Slovenia	26.77	9.12	35.89	12.27	33.50	8.11	10.24
Sweden	49.71	7.30	57.01	4.01	37.28	1.70	0

Distribution							
Country	VW/Scania	MAN	Combined	Daimler	Volvo	DAF	Iveco
EEA	9.31	15.29	24.60	36.06	21.53	7.86	8.90
Austria	11.58	37.71	49.29	26.46	11.86	4.59	7.8
Denmark	31.06	12.49	43.55	21.00	31.94	1.86	1.65
Estonia	24.89	10.86	35.75	32.13	31.67	0	0.45
Finland	28.63	5.82	34.45	25.81	37.89	0.19	1.65
Hungary	13.83	23.09	36.92	30.62	20.00	1.23	11.23
Latvia	31.51	10.27	41.78	13.01	32.88	3.42	8.90
Norway	31.68	11.07	42.75	18.34	37.17	1.00	0.74
Sweden	32.46	2.94	35.40	16.51	48	0.07	0.17

²⁴ The Notifying Party was unable to provide market shares broken down for specialty use. Based on the information gathered during the market investigation, for competitors, sales in the specialty segment are a minor part of their respective overall truck turnover. It follows that most of the market players do not analyse separately the market position in this segment. Furthermore, none of the respondents specifically pointed to any concerns with respect to the specialty segment in national markets.

Construction							
Country	VW/Scania	MAN	Combined	Daimler	Volvo	DAF	Iveco
EEA	9.21	28.96	38.17	28.35	16.25	5.61	8.77
Austria	6.98	55.59	62.57	19.32	9.58	3.11	5.42
Belgium	12.67	33.54	46.21	20.74	21.01	9.22	2.82
Czech Republic	12.97	30.39	43.37	29.86	15.98	3.02	7.78
Denmark	18.58	35.75	54.33	17.43	23.63	2.57	2.04
Estonia	26.74	25.58	52.32	17.44	27.91	0	2.33
Finland	39.65	5.19	44.84	15.17	36.46	0.60	2.93
Germany	2.16	36.82	38.98	53.78	2.79	1.01	3.44
Hungary	1.20	48.54	49.74	15.16	17.15	1.20	16.76
Iceland	36.46	21.88	58.34	13.54	28.13	0	0
Latvia	47.11	8.54	55.65	9.64	30.58	1.65	2.48
Netherlands	6.45	33.04	39.49	19.20	15.10	15.40	10.81
Norway	35.89	14.98	50.87	13.39	34.77	0.10	0.87
Poland	18.32	25.40	43.72	26.03	16.23	4.81	9.21
Slovenia	23.01	21.94	44.95	23.87	8.60	0.43	22.15
Sweden	44.20	3.27	47.47	3.27	48.54	0.08	0
UK	10.03	38.25	48.28	11.17	16.65	14.43	3.22

25. The market investigation indicated that even at national level and considering the narrowest market definition²⁵ the transaction will not lead to serious competition concerns essentially for the following reasons: (i) the other large competitors exercise sufficient competitive pressure since even in those markets where the merging parties have currently high market shares, the other suppliers are present and have the necessary know-how, product portfolio, capacity and service networks to expand; (ii) the majority of the customers and competitors consider that the transaction will not raise serious competition concerns; and (iii) according to the market investigation, there have not been substantial changes in the heavy truck market since the 2006 *MAN/Scania* decision (except for higher environmental standards and general economic downturn)²⁶.
26. As regards market entry/expansion, the market investigation indicated that all main truck suppliers have spare capacity and a fully developed network for sales and after sales services across the EEA countries, allowing for each of the competitors to expand in case of a price increase in any of the countries. As regards a potential greenfield entry, it appears that the barriers are rather high: customers still regard the brand as an important criteria for the choice besides reliability, wide service network and total cost of ownership²⁷. In addition, entering the market implies a strong investment in manufacturing facilities. Therefore, it appears difficult for newcomers to establish a significant presence in the heavy truck market across the EEA.
27. The case team has sent questionnaires to more than 1000 truck customers. Of those which responded (around 15%), a large majority (88%) did not raise concerns. Only a

²⁵ If the heavy truck market were sub-segmented per end-use, the EEA market shares of the merged entity for the period 2008-2010 would be 30% for long-haul transport, 25% for distribution and 38% for construction.

²⁶ In addition, the market investigation revealed that there have been no significant market share variations in the heavy truck markets in the last three years.

²⁷ See replies to Questionnaire to Truck Customers (Questions 40 and 47).

small number of customers (12% of the respondents) indicated that prices could rise after the merger. Half of these customers are based in national markets where the combined market share of the Parties in the overall heavy truck market will be below 35%²⁸. The remaining customers did not substantiate their claims, which are in contradiction with the replies of the vast majority of respondents in the markets in question. As regards the potential heavy truck sub-segments according to the truck end-use, the Commission sent questionnaires to customers and competitors present in all the potentially affected markets and the latter have not raised any concerns relating to any particular sub-segment.

(b) Austria

28. In Austria, the new merged entity would become the market leader with 47% market share, followed by Daimler (17.17%), Volvo (15.44%), DAF (13.87%) and Iveco (6.37%). VW/Scania was only the fourth player before the merger, with a market share of 11.86%. If the Austrian heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 37% in long-haul, 49% in distribution, and 63% in the construction segment with respect to the period 2008-2010. Given the high market shares, the market investigation had a particular focus on the Austrian heavy truck market and its potential submarkets.
29. First, it appears that all these players have a substantial presence in the Austrian market for a long time and possess a well-developed service and repair network in Austria, crucial feature when customers choose supplier, as the table below shows:

Table 5: Number of Service Points in Austria

Austria	MAN	VW/Scania	Daimler	DAF	Volvo	Iveco
Number of service points	54	17	43	12	18	63

30. Therefore, despite the high market share of the merged entity, Austrian customers will still have sufficient alternative suppliers, notably the current number two in the Austrian market, Daimler, but also Volvo, DAF and Iveco. Even the currently smallest supplier, Iveco, will have a service network with a similar size to the one from the merged entity. Furthermore, none of the Parties' competitors currently faces any capacity constraints which might prevent them from expanding their sales in Austria.
31. In line with this, the majority of the customers asked in the market investigation considered that the transaction would not raise any competition concerns in the Austrian market.
32. In addition, the market investigation has shown that the vast majority of Austrian customers consider that there have not been substantial changes in the heavy truck market since the *MAN/Scania* decision.

²⁸ In total, around 10% of the responding customers based in national markets where the Parties' combined market share will be below 35% have indicated that prices could rise after the merger.

33. Finally, the results of the market investigation also show that MAN and VW/Scania are not regarded as each other's closest substitutes²⁹, since the majority of the Austrian customers rather see the second supplier, Daimler, as the first substitute of MAN.
34. In light of the above, the Commission concludes that the proposed transaction would not give rise to any non-coordinated anti-competitive effects in Austria, should this be considered a separate market.

(c) Estonia

35. In the Estonian market, after the merger the Parties will have a combined market share of 42.11%. There will still be competitive pressure from the other market players (Volvo with 29.72%, Daimler with 20.43%, DAF with 6.19% and Iveco with 0.93%), none of them facing capacity constraints which would prevent them from expanding their Danish business. If the Estonian heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 45% in long-haul, 36% in distribution, and 52% in the construction segment with respect to the period 2008-2010.
36. The table below shows that all these players have a similar presence with a comparable number of service points in Estonia:

Table 6: Number of Service Points in Estonia

Estonia	MAN	VW/Scania	Daimler	DAF	Volvo	Iveco
Number of service points	5	6	2	3	3	2

37. None of the customers asked in the market investigation considered that the transaction would raise competition concerns in the Estonian market. Furthermore, none of them considered that there had been substantial changes since the *MAN/Scania* decision.
38. On the basis of these elements, the Commission considers that the notified operation does not raise competition concerns in the market for heavy truck in Estonia.

(d) Germany

39. In Germany, the new merged entity would be the second player with a 36.05% market share, after Daimler which will be the market leader with 37.32%. VW/Scania is only the fifth player before the merger, with a market share of 8.8%. DAF (11.56%), Volvo (10.33%) and Iveco (4.55%) are also present in this market. If the German heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 38% in long-haul and 39% in the construction segment with respect to the period 2008-2010.

²⁹ The Commission has analysed the closeness of substitution between MAN and Scania in its market investigation on the basis of the customers' purchase criteria, such as purchase price, total cost of ownership, quality/technology, robustness, emission technology, financial services, brand awareness, and service/repair network.

40. All these players are able to serve the market with a well-established service and repair network:

Table 7: Number of Service Points in Germany

Germany	MAN	VW/Scania	Daimler	DAF	Volvo	Iveco
Number of service points	353	144	781	146	124	371

41. The market investigation has shown that the merged entity will continue facing competition from the other players, notably of the current number one in the German market, Daimler, but also from Volvo/Renault, DAF and Iveco. None of these competitors currently faces any capacity constraints which might prevent them from expanding their sales in Germany. The market investigation also shows that customers do not believe that the transaction would have any anticompetitive impact on the market.

42. This is also in line with customers' response to the market investigation considering that there have not been substantial changes in the heavy truck market since the *MAN/Scania* decision.

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

(e) The Nordic countries

44. In *Denmark*, the Parties would have a combined market share of 43.89%, followed by Volvo (24.98%), DAF (15.25%), Daimler (12.44%) and Iveco (3.26%). If the Danish heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 42% in long-haul, 44% in distribution, and 54% in the construction segment with respect to the period 2008-2010.

45. These players have a similar and well-developed service and repair network in Denmark:

Table 8: Number of Service Points in Denmark

Denmark	MAN	VW/Scania	Daimler	DAF	Volvo	Iveco
Number of service points	19	35	28	16	26	32

46. Danish customers will still have sufficient alternative suppliers posing sufficient competitive pressure on the merged entity, in particular the current number two, Volvo, but also Daimler, DAF and Iveco. None of the Parties' competitors currently faces any capacity constraints which might prevent them from expanding their sales in Denmark. The majority of the customers responding to the market investigation confirmed that they could easily change to any of the main suppliers.

47. Moreover, the market investigation has shown that the vast majority of Danish customers consider that there have not been substantial changes in the heavy truck market since the *MAN/Scania* decision³⁰. The results of the market investigation also show that MAN and VW/Scania are not regarded as each other's closest substitutes. Rather the market investigation suggests that the second supplier, Volvo, is the closest competitor of VW/Scania.
48. In line with this, the majority of the customers asked in the market investigation considered that the transaction would not raise any competition concerns in the Danish market.
49. In the *Finnish* market, the proposed transaction will result in an increment of 4.61%, with the new entity having a market share of 44.44% but still facing strong competition from Volvo (33.42%) and Daimler (15.36%). If the Finnish heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 49% in long-haul, 34% in distribution, and 45% in the construction segment with respect to the period 2008-2010. The size of the competitor service point networks is similar, as Volvo has 28 service points and Daimler has 35, while MAN has 20 and VW/Scania has 24 service points. The market investigation has also suggested that customers do not view MAN and VW/Scania as the closest substitutes. Furthermore, the majority of the Finnish customers have shown no concerns with the transaction and consider that in essence the market remains unchanged since the *MAN/Scania* decision.
50. With respect to *Iceland*, the merged entity would become the market leader with 42.31% market share, but would face strong competition at least from Daimler (30.77%) and DAF (19.23%). Despite the fact that Volvo and Iveco have a 3.85% market share, the market investigation has shown that customers also perceive Volvo as a strong alternative to the Parties. If the Icelandic heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 46% in long-haul and 58% in the construction segment with respect to the period 2008-2010. None of the main manufacturers seem to face capacity constraints which would prevent them from expanding their Icelandic business, especially given the recent low volumes ([...] trucks sold in 2010).
51. The market investigation has also confirmed that customers do not view MAN and VW/Scania as the closest substitutes. In addition, customers do not believe that the transaction would have any anticompetitive impact on the market or that there have been any substantial changes in the heavy truck market in Iceland since the *MAN/Scania* decision.
52. In *Norway*, the situation is similar to Finland. The Parties have a combined market share of 46.40% and pre-merger MAN is the fourth player in the market (7.48%), behind Volvo (36.41%) and Daimler (12.96%), while DAF has 3% and Iveco 1%. If the Norwegian heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 53% in long-haul, 43% in distribution, and 51% in the construction segment with respect to the period 2008-2010. Volvo has 52 service points and Daimler has 30, whereas VW/Scania has 43 and MAN has 37. These data confirm

³⁰ One customer mentioned that "*Pricing practices are changing. One year brand a is aggressive and give good prices, maybe the same picture in year 2, but [then] they often try to increase prices and we go to a new aggressive supplier who wants his piece of the cake.*" This also confirms that customers are able to easily change suppliers.

that the remaining competitors will pose sufficient competitive pressure on the merged entity.

53. The market structure also suggests that the Parties are not each other's close competitors but rather VW/Scania is closer to Volvo whereas MAN is closer to DAF. This was also indicated by one customer. Furthermore, the market investigation has confirmed that customers consider that no substantial changes took place in the Norwegian market since the *MAN/Scania* decision.
54. As regards *Sweden*, there is only a small overlap (3.43%), which would not substantially change the competitive structure of the market.
55. The merged entity would have a 45.2% market share, followed by Volvo (43.75%), Daimler (8.37%), DAF (1.94%) and Iveco (0.2%). If the Swedish heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 57% in long-haul, 35% in distribution, and 47% in the construction segment with respect to the period 2008-2010. The merged entity would face strong competition by Volvo and also Daimler, who have a comparable number of service points (97 and 32, respectively, while VW/Scania has 93 and MAN has 39).
56. Additionally, no customer expressed concerns nor indicated any substantial changes in the market since the *Man/Scania* decision.
57. On the basis of the above elements, the Commission considers that the notified operation does not raise competition concerns in the markets for heavy truck in Denmark, Finland, Iceland, Norway and Sweden.

(f) Other markets

58. Based on a national geographic definition of the heavy truck market, the following further affected markets would exist: Belgium, Bulgaria, Czech Republic, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, and the UK.

Table 9: Market Structure Heavy Trucks (% , 2010)

Source: Notifying Party, based on registration data of national authorities

Country	VW/Scania	MAN	Comb.	Daimler	Volvo	DAF	Iveco
Belgium	13.82	18.44	32.26	12.19	26.73	22.46	6.29
Bulgaria	14.46	9.07	23.53	36.19	20.34	9.17	9.97
Czech Republic	17.40	17.91	35.32	17.81	16.92	20.87	5.79
France	8.79	8.35	17.14	15.00	44.52	14.49	8.46
Greece	10.07	13.62	23.69	37.02	16.88	6.95	12.48
Hungary	17.44	11.63	29.07	13.39	24.67	27.70	2.25
Ireland	20.73	11.74	32.48	16.15	25.87	19.27	2.57
Italy	11.42	7.72	19.15	10.37	20.84	12.00	37.37
Latvia	29.15	3.40	32.55	15.74	27.23	20.21	3.40

Country	VW/Scania	MAN	Comb.	Daimler	Volvo	DAF	Iveco
Luxembourg	11.13	11.55	22.68	28.73	29.58	13.10	5.92
Netherlands	16.77	10.12	26.89	12.48	21.49	34.98	2.41
Poland	16.11	16.28	32.38	14.05	27.54	19.90	6.13
Portugal	10.19	9.42	19.61	10.97	42.38	23.89	3.15
Romania	8.62	18.54	27.17	12.38	15.39	19.10	23.27
Slovakia	20.06	13.3	33.37	19.25	28.66	10.44	7.95
Slovenia	20.60	13.45	34.05	24.75	25.89	4.15	11.16
Spain	10.84	14.39	25.24	13.22	30.77	14.33	16.06
UK	17.41	10.73	28.14	19.61	22.93	20.43	5.09

59. As regards *Belgium*, the merged entity will become the market leader with a market share of 32.26%. If the Belgian heavy truck market were sub-segmented per end-use, the merged entity would have 46% in the construction segment with respect to the period 2008-2010. However, customers will be able to resort to all the other strong competitors, i.e. Volvo (26.73%), DAF (22.46%), Daimler (12.19%), and Iveco (6.29%). In the *Netherlands*, the domestic truck manufacturer DAF is the market leader (34.98%) and the new entity will be the second player (26.89%), followed by Volvo (21.49%), Daimler (12.48%) and Iveco (2.41%). If the Dutch heavy truck market were sub-segmented per end-use, the merged entity would have 39% in the construction segment with respect to the period 2008-2010. In *Luxembourg*, the new entity will reach a market share of 22.68% while facing competition from the other strong market players: Volvo (29.58%), Daimler (28.73%), DAF (13.10%) and Iveco (5.92%). The market investigation carried out by the Commission in all these markets confirmed that the vast majority of customers have not raised any competition concerns and considered that there have been no substantial changes since the 2006 *MAN/Scania* decision
60. In the *UK* the new entity will become leader with a market share of 28.14%. If the UK heavy truck market were sub-segmented per end-use, the merged entity would have 48% in the construction segment with respect to the period 2008-2010. However, it will face strong competition from Volvo (22.93%), DAF (20.43%), Daimler (19.61%) and also Iveco (5.09%). In *Ireland*, the merged entity will also become the market leader with a slightly stronger market position of 32.48%. If the Irish heavy truck market were sub-segmented per end-use, the merged entity would have 49% in the long-haul segment with respect to the period 2008-2010. However, the transaction would not have any significant a significant effect on competition, since strong competitors will still remain present in the market (Volvo with 25.87%; DAF 19.27%; Daimler 16.15%; and Iveco with 2.57%). In both these markets, the market investigation confirmed that the majority of customers have not raised any competition concerns and considered that there have been no substantial changes since the 2006 *MAN/Scania* decision.
61. With regard to *Czech Republic, Latvia, Poland, Slovakia* and *Slovenia*, the merged entity would become the market leader with market shares between 32.38% and 35.32%. If the heavy truck market were sub-segmented per end-use in these countries, the merged entity's market shares would be 36% in the long-haul segment in Slovenia, 42% in the distribution segment in Latvia and, as regards the construction segment, 43% in the

Czech Republic, 56% in Latvia, 44% in Poland, and 45% in Slovenia. However, no competitive concerns arise in this market, due to the presence in each market of four other strong competitors with market shares above 17% and (Slovakia: Volvo 27%; Daimler 18.8%; DAF 8.1% and Iveco 13.1%. Slovenia: Daimler 27.6%; Volvo 19.7%; Iveco 12.8 and DAF 4.8%). In all the above markets the market investigation carried out by the Commission confirmed that the vast majority of customers have not raised any competition concerns and considered that there have been no substantial changes since the 2006 *MAN/Scania* decision

62. In *Hungary* and *Romania* the new entity will become the market leader but it will reach slightly lower market shares, respectively of 29.07% and 27.17%. If the Hungarian heavy truck market were sub-segmented per end-use, the merged entity's market shares would be 37% in distribution and 50% in the construction segment with respect to the period 2008-2010. The new entity will face strong competition from other main suppliers (Hungary: DAF 27.70%; Volvo 24.67%; Daimler 13.39% and Iveco 2.25%. Romania: Iveco 23.27%; DAF 19.10%; Volvo 15.39 and Daimler 12.38%). Furthermore, no concerns were raised by customers from both countries on the impact of the transaction.
63. In *Bulgaria, France, Greece, Italy, Portugal, and Spain* the Parties hold combined market shares between 17.14% and 25.24%. If the Greece heavy truck market were sub-segmented per end-use, the merged entity would have 48% in the long-haul segment with respect to the period 2008-2010. In none of these countries will the new entity become the market leader, but rather the second or third player and always facing competition from four other equally strong players (except in Portugal, where Iveco has 3.15%). The vast majority of customers in these countries have not raised any competition concerns and considered that there have been no substantial changes since the 2006 *MAN/Scania* decision.
64. In light of the above, the Commission concludes that the proposed transaction would not give rise to any competition concerns in the national heavy truck markets described above.

Potential coordinated effects

65. The Commission has also carefully assessed the question whether the proposed transaction could give rise to coordinated effects within the meaning of Recital 22 b) of the Guidelines on the assessment of horizontal mergers³¹ in particular in the light of recent antitrust inspections carried out in the truck sector.
66. The results of the investigation show that the fundamental characteristics and dynamics of the markets did not change since the *MAN/Scania* decision, when the Commission concluded that the markets for heavy trucks were not markets in which it was simple to reach terms of coordination without an agreement or a concerted practice due to heterogeneous product characteristics, the lack of market transparency, the absence of

³¹ Guidelines on the assessment of horizontal mergers under Council Regulation on the control of concentrations between undertakings, OJ C31/03, of 5.2.2004.

structural links and the asymmetric market structure both in the EEA and at national level³².

67. The present assessment and decision which concerns only the likelihood of coordinated effects within the meaning of the Merger regulation is without prejudice to any assessment or decision that the European Commission may undertake or adopt in the field of antitrust whether they affect or not the undertakings which are parties to the proposed transaction.

Overall conclusion for trucks

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

(B) Bus related markets

69. The analysis below deals first with buses and coaches, second with chassis and third with bus engines.

(i) Buses and coaches

Relevant Product Markets

70. There are three basic types of buses: city buses, inter-city buses and touring coaches. City buses are designed for public transport in urban areas. They are used for carrying a large number of passengers over relatively short distances and for relatively short periods of time. Accordingly, city buses offer space for standing passengers, tend to have a low-floor or are at least low-entry with few, if any, steps as well as several doors, which are wider than in other types of buses to allow for rapid passenger entry and exit.
71. Inter-city buses are designed for public overland transport in rural districts and inter-city travel. In line with the nature of the service, ease of entry and exit are less important in inter-city buses than for city buses. Inter-city buses are normally not particularly luxuriously equipped. To date, most inter-city buses do not have a low-floor. They generally have more powerful engines than city buses but less powerful engines than touring coaches.
72. *Touring coaches* are intended to serve the leisure market, mainly for long-distance tourist travel. They tend to be higher than city and inter-city buses and are equipped in a comparatively luxurious manner. In particular, they are often equipped with special storage space for luggage, air conditioning, toilets and television screens, which make such buses more suitable for longer trips. Low-floor technology and ease of entry are of little or no importance. A touring coach will normally be equipped with a manual gearbox, whereas city and inter-city buses tend to have automatic gearboxes.

³² COMP/M.4336 – *MAN/Scania*, paras. 96-97. See replies to Questionnaire to Truck Competitors (Question 106) and Questionnaire to Truck Customers (Questions 66 and 67).

73. In previous decisions³³, the Commission consistently considered that the three different buses, despite possible partial overlaps, belong to the three separate markets. This is also the view taken by the Notifying Party.
74. The market investigation carried out by the Commission confirmed that this classification remains valid. Although the boundaries between the three markets are not always clear, in particular when it comes to inter-city buses, there are substantial differences in terms of technical specifications, equipment and demand structure. The blurring of the boundaries between the markets will be taken into account in the Commission's assessment below.

Relevant Geographic Markets

75. In *MAN/Scania*, the Commission left the market for buses open noting that although technical and quality standards for city and inter-city buses are largely uniform across the EEA, the market conditions were still not sufficiently homogeneous to consider the markets EEA-wide,³⁴ and analysed both scenarios. The Notifying Party submits that the market conditions have changed in recent years and the relevant market therefore should be considered as being wider in scope than national.
76. For city buses and inter-city buses, the Notifying Party submits that developments have taken place in bus markets in recent years. The main suppliers tend to be active in all important EEA countries. Most manufacturers have only a very small number of EU production facilities from which they serve the entire EEA and neighbouring countries. Transportation costs do not represent a material obstacle to trade. When it comes to customer purchase patterns, even outside the mandatory tender procedures which in particular characterises the city bus market, more and more customers have implemented centralised purchasing strategies procuring buses on an EEA level. Also, there are no national legislation/technical requirements in the EEA.
77. The Notifying Party submits that the market for touring coaches is also EEA-wide due to similar pricing and rebate conditions, the existence of EEA-wide distribution and service networks, identical technical specifications within the EEA and the existence of EEA-wide general warranty conditions and maintenance ranges. In *Renault/Iveco*, the Commission found that markets for coaches are at least EEA-wide.³⁵ In *MAN/Scania*, the Commission's market investigation confirmed a trend towards wider geographic markets for coaches (certain manufacturers apply a single recommended price list across the EEA and several technical and regulatory requirements are similar across the EEA)³⁶. However it also found some indications that markets are still national in scope, such as the fact that the market shares of the major competitors varied significantly between

³³ Case No. COMP/M.4336 *MAN/Scania*. See also Case IV/M.477, *Mercedes-Benz/Kässbohrer*, Commission decision of 14.02.95; IV/M.1672, *Volvo/Scania*, Commission decision of 14.03.00; COMP/M. 1980 – *Volvo/Renault V.I.*, Commission decision of 01.09.00 and COMP/M.2201, *MAN/Auwärter*, Commission decision of 20.06.01.

³⁴ Case No COMP/M.4336 – *MAN/Scania*, para. 50.

³⁵ Case No IV/M.1202 – *Renault/Iveco*, para. 21.

³⁶ Case No COMP/M.4336 – *MAN/Scania*, paras. 55-57.

countries within the EEA and customers and competitors had also indicated that significant price differences still existed. However, the geographic market definition was left open.

78. In this case the market investigation found similar market conditions as were found in *MAN/Scania* for example customers source from home countries and abroad but require national after-sales networks³⁷ In any event the geographic market can be left open since on any possible definition, the Commission considers that the concentration does not raise serious doubts as to its compatibility with the internal market.

Competitive Assessment

Buses and Coaches

Methodology to assess market strength of the bus suppliers

79. The Notifying Party – in line with the methodology applied in previous cases³⁸ – submitted market share data for the different national bus markets based on national registration data. In *MAN/Scania*, the Commission found that registration data may not provide a reliable picture in all Member States in particular where there are a significant number of body builders that do not produce the entire buses themselves but purchase the chassis from other bus manufacturers. The registration of buses refers to a specific number on the chassis of the bus. Accordingly, all buses are registered under the name of the chassis manufacturer, even if the final bus is manufactured and sold by body builders. However the market investigation in this case found that bodybuilders tend to exercise less competitive constraint since customers show or note an increased preference to buy from integrated bus suppliers or through a one-invoice system. Additionally, even if the bus is purchased from a body-builder, the choice of the chassis (being the most important functional part of the bus) is determined by the customer (which explains the existence of the two-invoice system to the customers: one for the chassis and one for the body as further explained below). Thus, even if the registration data are somewhat distortive, the market investigation in this case showed that they tend to reflect market reality. They are also used by market players to evaluate the market.³⁹ However it should be noted that they are conservative figures and tend to overstate the shares of the Parties and other market participants.
80. In particular the markets for city buses but also for inter-city buses are characterised by bids⁴⁰ and volatile and unpredictable demand ("lumpy" orders). Consequently, the market position of one company may change substantially depending on the particular contracts awarded during one year. Therefore in *MAN/Scania*, the Commission found that annual market share data do not provide an adequate picture of the market position

³⁷ One competitor's reply email dated 14 September 2011.

³⁸ See e.g. Commission Decision of 20 June 2001, Case No. COMP/M.2201–*MAN / Auwärter*, paragraph 24, Table 1.

³⁹ One competitor for example provided market shares based on registration data to the Commission (email dated 14.09.2011).

⁴⁰ Submissions by Volkswagen

of players and relied on market shares based on registration data over a three year period. In this decision therefore, the Commission will also take into account market share data in the three year period 2008 to 2010.

The overall evolution of the bus markets since 2006

81. Overall the market investigation showed no dramatic changes to market conditions since the Commission's decision in *MAN/Scania* in 2006. Overall, the main suppliers in the EEA are Daimler, Volvo, Iveco, Solaris, VDL and Alexander Dennis. The information submitted by the Notifying Party and gathered during the investigation shows that there are three main trends in the last five years: a) the green technologies play an ever increasing role, b) the economic crises led to drop of bus sales and finally c) some entry occurred in the bus markets. In relation to market share data, whereas there are some fluctuations, no clear trend can be observed.
82. In relation to nitrogen (NO_x) emissions in the European Union, all bus manufacturers are currently obliged to meet the requirements of the Euro V standard since October 2008 for new vehicle models and since October 2009 for all new vehicles sold. The main effect of Euro V was to reduce the emission of NO_x from diesel vehicles. The Euro VI emission standard introduced by Regulation 595/2009 published on 18 July 2009⁴¹ will enter into force in the EU on 31 December 2012 . This norm represents a very large reduction in emission levels compared to Euro V. Today EGR and SCR are the two technologies used to reduce oxides of nitrogen (NO_x) in diesel exhaust fumes. From a supply-side perspective, neither EGR nor SCR are proprietary technologies. Therefore, producers are not prevented from manufacturing both technologies.⁴² The market investigation confirmed that bus manufacturers are now in the process of developing or have developed engines to comply with EURO VI.⁴³ The new EURO VI norm which imposes much stricter requirements will most likely require all manufacturers to combine these two technologies.⁴⁴
83. There is a general move towards CO₂ emission reduction technologies,⁴⁵ although this is not currently governed by any specific EU regulation. Other large competitors confirm that they are developing new technologies⁴⁶ in this area and most of them offer a range of choices such as hybrid, biogas and compressed natural gas (CNG).⁴⁷ One competitor raised the point that Scania is currently the only bus manufacturer able to provide

⁴¹ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC.

⁴² Case COMP/M.4336, *MAN/Scania*, 20 December 2006, paras.20-22 and Form CO para 207.

⁴³ Form CO, para 212 and one competitor reply dated 13 September 2011.

⁴⁴ Calls with competitors dated 13 September 2011.

⁴⁵ Form Co, paragraph 221.

⁴⁶ See replies to Questionnaire to Bus and Chassis Manufacturers, (Questions 161, 171, 181, 191) .

⁴⁷ Form Co, paragraph 219.

ethanol fuel technology. However there appears to be a sufficient alternative range of technologies from which customers can choose so that no competition concerns arise from this.

84. Finally, the market investigation⁴⁸ confirmed that there has been significant new entry to European bus markets since 2006 as will be discussed below.

City buses

(a) EEA

85. In the city bus market [...] buses were sold in 2010 compared with [...] in 2006 in the EEA. The table below presents the main market players and their market position in the last three years.

Table 10: City buses EEA (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[5-10]	[5-10]
MAN	[10-20]	[10-20]
Combined	[10-20]	[20-30]
Daimler	[20-30]	[20-30]
Iveco	[10-20]	[10-20]
Volvo	[5-10]	[10-20]
Solaris	[5-10]	[5-10]
Alexander Dennis	[5-10]	[5-10]
VDL	[0-5]	[0-5]
Optare	[0-5]	[0-5]
BMC	[0-5]	[0-5]

⁴⁸ One complainant raised the issue that the transaction could lead to a significant impediment of competition in the market for automotive iron castings. As the combined entity will have a wide portfolio of vehicles it will have dominant position in the purchasing market. The previous decisions of the Commission as well as the data submitted by the Parties indicates that besides the merged entity there will remain enough demand in the EEA for iron castings. In particular, it appears that vehicle manufacturers prefer multi-sourcing and have therefore an interest to maintain a number of potential suppliers who can then ensure viable competition in tenders.

BredaMenarinibus	[0-5]	[0-5]
Jelcz	[0-5]	[0-5]
Temsa	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

86. Based on registration figures submitted by the Notifying Party, at EEA level the merged entity would be the second largest player with [20-30]%⁴⁹ market share. Its three largest competitors are Daimler, the market leader, Iveco and Volvo with estimated market shares of [20-30]%, [10-20]% and [10-20]%, respectively. These historical integrated bus manufacturers have a wide-presence in most Member States with substantial sales and extensive service network. As the results of the market investigation show they participate in many inter-city bus bids.⁵⁰
87. When it comes to smaller players, Solaris and Alexander Dennis have considerable shares of [5-10]% and [5-10]% respectively. There are a number of smaller players also present representing together [10-20]% of the market who are participating in and winning tenders across the EU.⁵¹ *Solaris Bus & Coach S.A.* is a bus, coach and trolleybus manufacturer based in Bolechowo-Osiedle and •roda Wielkopolska, near Pozna•, Poland. Solaris is one of the newest players in the European bus market (founded in 1994). *Alexander Dennis* is located in the UK, produces chassis, coaches and special buses such as double-deckers. To date, it focuses its commercial activities on the UK. It produces chassis as well as bodies and has a particular reputation for double-decker buses. *VDL Bus Chassis* is a Netherlands and Belgium based bus builder which originated from the bus-building business of DAF. It manufactures integral buses as well as chassis in Belgium and in the Netherlands. *Autosan SA*, Sanok, Poland, (*Autosan*) started building buses in Poland around 1950. It produces city buses, inter-city buses, coaches, as well as school buses and mini-buses. *Temsa Global* is a coach, bus and light truck manufacturer located in Adana, Turkey. Since 2000 it developed a full range of coaches for Western European markets, utilising MAN engines and axles and ZF transmissions. *Van Hool* of Belgium manufactures a full range of buses and coaches; 80% are sold outside Belgium, including in Europe. In addition to its own full range, Van Hool is also active as a bodybuilder.
88. The market investigation confirmed the findings of the *MAN/Scania* decision: entry and expansion in the market for city buses is not only possible for large and financially strong players but also for smaller players such as Solaris and van Hool. Indeed, there

⁴⁹ Form CO pg. 95.

⁵⁰ See replies to Questionnaire to Bus and Chassis Customers (Question 22) and Minutes of 13 September 2011 .

⁵¹ For instance, VDL, Optare, BMC, Temsa, Van Hool, BredaMenarinibus.

are a number of new entrants to the European market since 2006 including King Long⁵², Tata⁵³, Yutong⁵⁴ and SOR.⁵⁵

89. Furthermore, there are examples of expansion to national markets. For instance Iveco, entered the Swedish market. During the market investigation another major European competitor indicated that it is planning further expansion in several Member States where it currently has no or no significant presence.

(b) National Markets

90. The activities of VW and MAN overlap in a number of Member States of the EEA. Based on registration figures, the following national markets for city buses are affected by the proposed transaction⁵⁶: Sweden, Finland, Norway, Denmark, Poland, UK, Spain, Portugal, Germany, Austria, Luxembourg and Netherlands. The table below shows that the geographic focus of the Parties is often complementary. In this respect, Sweden and Spain provide the clear exceptions with high combined market shares of [50-60]% and [40-50]% where Scania and MAN are currently the two market leaders. The countries where market shares are over 35% in 2010 also have high average market shares over the period from 2008-2010 although the shares vary significantly.

Table 11: Overview of Parties Market Shares across EEA (Average 2008-2010)

Source: Notifying Party, based on registration data of national authorities

Where	Scania	MAN	Combined
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- 52 According to the Notifying Party, King Long manufactures more than 200 different bus models. It has manufactured about 20% of the vehicle park in China and is expanding its geographic reach. King Long has established distributor and service networks in 55 countries and has successfully sold buses and coaches in Britain, Bulgaria, Italy, Malta, Sweden and Hungary. King Long has set up ten distributors in Europe.
- 53 According to the Notifying Party Tata is one of the largest manufacturers of buses in the world and the largest in India. In 2004, it acquired the Daewoo Commercial Vehicles Company, South Korea's second largest truck maker. In 2005, it acquired a 21% stake in Hispano Carrocera, a reputed Spanish manufacturer of buses and coaches. Then at the end of 2009, the company bought the remaining 79% stake in Hispano. Since then, Hispano has expanded its activities. While it is currently still mainly active as a bodybuilder it will deliver ten complete hybrid buses to the city of Madrid in 2012.
- 54 According to the Notifying Party, Zhengzhou Yutong Group Co. Ltd. ("Yutong"), one of China's top 500 enterprises, has set up a company called Yutong Eurobus to focus on the European market, with headquarters in Dubai and a centralised parts warehouse in Germany. The company also has development and testing facilities in Iceland. Yutong have had so far minor sales in Iceland, Slovakia and Cyprus. Form Co, para 951.
- 55 According to the Notifying Party, Sor is based in Libchavy, Czech Republic. Sor builds a range of integral city and intercity buses which have been sold principally in the Czech Republic, Slovakia and Poland. Also Replies to Questionnaire 1 by Volvo, Daimler, Iveco, Solaris, Temsa.
- 56 As in *MAN/Scania*, the approach to use registration data for assessing whether a specific market is affected by the proposed transaction provides a "worst-case" scenario since – as indicated above – registration data also include MAN's and Scania's sales of chassis to body builders which sell the finished product (bus) on their own account to the final customer.

Where	Scania	MAN	Combined
EEA	[5-10]	[10-20]	[20-30]
Sweden	[30-40]	[20-30]	[50-60]
Finland	[50-60]	[0-5]	[50-60]
Norway	[5-10]	[10-20]	[10-20]
Poland	[0-5]	[5-10]	[10-20]
Denmark	[20-30]	[10-20]	[30-40]
Spain	[10-20]	[20-30]	[40-50]
Portugal	[0-5]	[40-50]	[40-50]
UK	[10-20]	[5-10]	[20-30]
Austria	[0-5]	[30-40]	[30-40]
Germany	[0-5]	[20-30]	[20-30]
Luxembourg	[0-5]	[10-20]	[20-30]
Netherlands	[0-5]	[20-30]	[20-30]

Sweden

91. [...] city buses were sold in Sweden in 2010 compared with [...] in 2006.

Table 12: City buses Sweden (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[30-40]	[30-40]
MAN	[20-30]	[20-30]
Combined	[50-60]	[50-60]
Volvo	[10-20]	[20-30]
Solaris	[20-30]	[10-20]
Daimler	[0-5]	[0-5]
Iveco	[0-5]	[0-5]
Temsa	[0-5]	[0-5]

Others	[0-5]	[0-5]
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92. The merged entity would have a combined market share in Sweden of [50-60]% followed by Volvo with [20-30]% and Solaris with [10-20]% and Daimler with [0-5]%. There are also a number of smaller players present in the market. The Notifying Party submits that the market in Sweden for city buses is a bidding market, characterised by "lumpy orders" and hence a market where the market position of the different players can vary significantly over time. Indeed, [...] % of MAN's sales in Sweden are made on the basis of tender procedures. For instance, MAN's market share dropped significantly; from around [30-40]% in 2008 to [20-30]% in 2010. On the contrary, Solaris' market share increased significantly; from [0-5]% (and [0-5]% in 2006) in 2008 to [20-30]% in 2010. Volvo's position remained relatively strong over the three years. Also Iveco is a recent entrant in the Swedish market. Indeed, 70% of customers who considered that the transaction would not substantially affect competition although three competitors indicated that there may be less competition post-merger. However, the bidding nature of the market which allows for bus companies present in other countries to enter the market and the presence of several alternative suppliers ensure that there is sufficient scope for customers to switch away from the merged entity in the event of a potential price rise by the merged entity. As a result the transaction is unlikely to give rise to competitive concerns in Sweden.

Finland

93. [...] city buses were sold in Finland in 2010s. The table below shows the main suppliers.

Table 13: City buses Finland (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[20-30]	[50-60]
MAN	[0-5]	[0-5]
Combined	[20-30]	[50-60]
Volvo	[40-50]	[20-30]
Daimler	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Others	[20-30]	[10-20]

94. In Finland, on the basis of the market shares in the tables above, the merged entity would become market leader with an estimated market share of [50-60]% for the 2008–2010 period. However the 2010 figures show the merged entity (with [20-30]%) as the second

largest player, behind Volvo ([40-50]%). Indeed, Scania's and MAN's market shares have dropped significantly since 2008, from [80-90]% combined to [20-30]%. Furthermore MAN had no share in 2010 and the average increment is only [5-10]%. This shows again the volatile nature of the market for city buses. Winning or loosing a tender can substantially change the market position of a supplier. Indeed, no customers were concerned in Finland as they consider that they have sufficient choice, whereas three competitors of 15 who replied were concerned about the merged entity's ability to raise prices in Finland.

Denmark

95. There were [...] city buses sold in Denmark in 2010. The table below shows the main suppliers.

Table 14: City buses Denmark (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[20-30]	[20-30]
MAN	[10-20]	[10-20]
Combined	[40-50]	[30-40]
Solaris	[5-10]	[20-30]
VDL	[20-30]	[10-20]
Volvo	[10-20]	[10-20]
Daimler	[5-10]	[5-10]
Others	[0-5]	[0-5]

96. In Denmark, as can be seen from the table the average combined market share over the three year period of the merged entity would be [40-50]%. The merger brings together number two and four in the market. The market investigation shows that with 4 strong other players in the market: Solaris, VDL, Volvo and Daimler there is sufficient competitive constraint on the merged entity. Almost [90-100]% of customers were unconcerned in Denmark, although three competitors raised concerns. The Commission therefore considers that there is sufficient competitive constraint on the merged entity to believe that the transaction does not give rise to competitive concerns.

Spain

97. The number of city buses sold in Spain in 2010 was [...]. The table below presents the main suppliers.

Table 15: City buses Spain (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[10-20]	[10-20]
MAN	[30-40]	[20-30]
Combined	[40-50]	[40-50]
Volvo	[10-20]	[5-10]
Daimler	[10-20]	[10-20]
Iveco	[20-30]	[20-30]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

98. In Spain although the merged entity would have an average combined market share of [40-50]% it faces competition from a number of players. Iveco with [20-30]% and Volvo whose market share increased by [10-20]% since 2008 to [10-20]% in 2010 and Daimler with [10-20]% in 2010, exercise strong competitive constraint on the Parties. The Notifying Party argues that the market shares of the Parties and their competitors based on registration data are overstated in Spain because they are based on registration data due to a strong presence of bodybuilders (although the market share is always attributed to the chassis manufacturer). Given however that usually even if a body-builder sells the final bus, the choice of the chassis is usually with its client and form a crucial part of his purchase decision, the Commission considers that the market share figures provide a realistic view of the market dynamism. During the market investigation the majority of respondents considered that there is currently a variety of competitors to ensure sufficient alternative choice for customers except for 2 competitors. Therefore, the Commission considers that the overall results of the market investigation show that there will be sufficient competitive constraint on the merged entity after the transaction.

Portugal

99. The number of city buses sold in n Portugal was [...] in 2010. The table below presents the main suppliers.

Table 16: City buses Portugal (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[20-30]	[40-50]
Combined	[20-30]	[40-50]
Volvo	[40-50]	[40-50]
Daimler	[30-40]	[10-20]

100. In Portugal, there is no overlap between the Parties in 2010 since Scania had no sales in that year. Its market shares have been minimal below [0-5]% since 2008. Moreover, the merged entity would continue to face strong competition from Volvo, which will remain the clear market leader. Indeed, the majority of respondents had no concerns except for 2 competitors.

UK

101. The number of city buses sold in the UK was [...] in 2010. The table below presents the main suppliers.

Table 17: City buses United Kingdom (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[20-30]	[10-20]
MAN	[0-5]	[5-10]
Combined	[20-30]	[20-30]
Volvo	[10-20]	[20-30]
Alexander Dennis	[30-40]	[30-40]
Optare	[10-20]	[10-20]
Daimler	[0-5]	[0-5]
VDL	[5-10]	[0-5]
Temsa	[0-5]	[0-5]
Others	[0-5]	[0-5]

102. In the UK over the last three years, the combined market shares of the Parties have been equal to or below [20-30]%. Moreover, there are a number of other competitors on the market including Alexander Dennis with [30-40]% and Volvo with [20-30]%. The presence of strong alternative was also confirmed during the market investigation, as no concerns were raised in the UK by any of respondents.

103. The Commission therefore considers that the transaction will not give rise to any competition concerns in the market for city buses in the UK.

Austria and Germany

104. The market size in Austria was [...] and in Germany it was [...] buses.

Table 18: City buses Austria (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[20-30]	[30-40]
Combined	[20-30]	[30-40]
Volvo	[0-5]	[0-5]
Daimler	[60-70]	[50-60]
Solaris	[5-10]	[10-20]
Others	[0-5]	[0-5]

Table 19: City buses Germany (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[20-30]	[20-30]
Combined	[20-30]	[20-30]
Volvo	[0-5]	[0-5]

Daimler	[50-60]	[50-60]
Iveco	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Solaris	[5-10]	[[5-10]
Temsa	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

105. In Austria, there is no overlap between the Parties in 2010, and the overlap on the 2008–2010 period is minimal, as the increment due to Scania's market share is below [0-5]%. In Germany, the overlap between the Parties in 2010 is also minimal, as Scania's market share is [0-5]%.

106. In both countries, the merged entity would face strong competition from Daimler, which is the clear market leader, with a market share of more than [50-60]%. The Notifying Party also argues that Daimler and MAN are considered as "domestic suppliers", in both Austria and in Germany because they have plants in both countries, with significant workforces. The Notifying Party argues that this is an important advantage in terms of brand awareness whereas Scania is a foreign supplier that is not seen to play a significant role for local employment. Indeed, during the market investigation no concerns were raised by customers in Austria. In relation to Germany, the majority of respondents were unconcerned about the transaction except for two competitors. The Commission therefore considers that the transaction will not give rise to any competition concerns in the markets for city buses in Austria and in Germany.

Poland, Luxembourg, Netherlands and Norway

107. The market size in Poland in 2010 was [...], in Luxembourg it was [...], in the Netherlands it was [...] and in Norway it was [...].

Table 20: City buses Poland (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[10-20]	[5-10]
Combined	[10-20]	[10-20]
Daimler	[10-20]	[10-20]

Iveco	[0-5]	[0-5]
Solaris	[50-60]	[50-60]
Autosan	[5-10]	[5-10]
Jelcz	[0-5]	[0-5]
MAZ	[0-5]	[0-5]
Solbus	[0-5]	[0-5]
Otokar	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 21: City buses Luxembourg (% , shares 2008 – 2010)
Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[5-10]	[10-20]
Combined	[5-10]	[20-30]
Volvo	[10-20]	[5-10]
Daimler	[30-40]	[30-40]
Iveco	[30-40]	[30-40]
Van Hool	[5-10]	[5-10]
Others	[0-5]	[0-5]

Table 22: City buses The Netherlands (% , shares 2008 – 2010)
Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-10]	[0-5]
MAN	[0-10]	[20-30]

Combined	[0-10]	[20-30]
Volvo	[0-5]	[0-5]
Daimler	[20-30]	[30-40]
VDL	[60-70]	[30-40]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 23: City buses Norway (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-10]	[5-10]
MAN	[0-10]	[10-20]
Combined	[0-10]	[10-20]
Volvo	[60-70]	[50-60]
Daimler	[10-20]	[10-20]
Iveco	[0-5]	[0-5]
Solaris	[10-20]	[10-20]
Others	[0-5]	[0-5]

108. In Poland, the combined share of the Parties was ([10-20]%), over the three year period between 2008 and 2010, their average combined share was [10-20]%. As the table show, there is a large number of other competitors present in Poland including Daimler with a share of [10-20]% over three years and Solaris with a [50-60]% share.

109. In Luxembourg, in 2010 the combined share is [5-10]%, although on three year average figures, the combined share reaches [20-30]%. Again a number of other strong competitors are present in this market with shares of [30-40]% (Iveco), Daimler ([30-40]%), Van Hool ([5-10]%) and Volvo ([5-10]%).

110. In the Netherlands, the 2010 figures indicate that the Parties had minor combined market share of [0-10]%, their combined share reaches [20-30]% over a three year period illustrating the volatile nature of the city bus markets. Based on the three year average figures, the merged entity would be third in the market behind VDL ([30-40]%) and Van Hool ([30-40]%). Other smaller competitors are also present.

111. In Norway, the merged entity would have a combined market share of [10-20]% for the 2008–2010 period, and less than [0-10]% without any overlap if only 2010 is considered. Scania and MAN's market shares have dropped significantly since 2008, from [40-50]% to [0-10]% for MAN and from [10-20]% to [0-10]% for Scania. Volvo with [50-60]% is the clear market leader with Daimler ([10-20]%) and Solaris ([10-20]%) also present and able to exert significant competitive constraint on the merged entity. During the market investigation the majority of respondents were unconcerned in Norway except for two competitors.
112. Indeed, customers consider in these markets that they have sufficient alternatives and were not concerned by the transaction in any of these countries.
113. Given the above, the Commission considers that the transaction will not give rise to any competition concerns in the market for city buses in Poland, Luxembourg, the Netherlands or Norway.

Coordinated effects

114. The Commission has also considered whether the merger would increase the risk for co-ordinated effects. The Commission has previously found that the markets for city buses display several characteristics indicating a low risk of co-ordinated effects: (i) the market for city buses is a bidding market⁵⁷ (ii) characterised by strong, price-sensitive and knowledgeable customers as well as (iii) in most cases the presence of at least two and several smaller competitors (potential "mavericks"); (iv) complex heterogeneous product with much customisation. (v) In addition, fleet operators buy buses at irregular intervals and in different quantities ("lumpy orders").⁵⁸ Different tenders may also include widely diverging conditions for ancillary services, after-sales servicing, spare-parts delivery, warranties etc. The interplay of all these parameters makes mutual monitoring of each other's competitive behaviour by the supposedly co-ordinating firms very difficult⁵⁹. This volatility makes the market very difficult to predict and makes it most difficult to establish co-ordination mechanisms that are sustainable over time. The market investigation in this case does not lead the Commission to consider that these conditions have changed.
115. As a result the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market due to coordinated effects.

Inter-city buses

(a) EEA

116. In the inter-city bus market [...] buses were sold in 2010 compared with [...] in 2006 in the EEA.

⁵⁷ It should, however, be noted that the *mere* fact that the city bus market is a bidding market does not as such exclude possible co-ordinated effects on this market, cf. COMP/M.2201 - *MAN/Auwärter*, paragraph 35.

⁵⁸ According to the market investigation, city buses are typically replaced after 10-15 years.

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

117. The table below presents the main market players and their market position in 2010 and over the last three years. Bids also play an important role in the market for inter-city buses though to a lesser extent than for city buses. Since the market shares are lumpy, the Commission also examined the market shares for inter-city buses across an average of three years.

Table 24: Inter-City buses EEA (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

EEA	2008	2009	2010	2008–2010 (average)
Scania	[5-10]	[0-5]	[0-5]	[0-5]
MAN	[5-10]	[10-20]	[10-20]	[10-20]
Combined	[10-20]	[10-20]	[10-20]	[10-20]
Volvo	[5-10]	[5-10]	[5-10]	[5-10]
Daimler	[30-40]	[30-40]	[30-40]	[30-40]
Iveco	[30-40]	[30-40]	[30-40]	[30-40]
VDL	[0-5]	[0-5]	[0-5]	[0-5]
Temsa	[0-5]	[0-5]	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]	[0-5]	[0-5]
SOR	[0-5]	[0-5]	[0-5]	[0-5]
Autosan	[0-5]	[0-5]	[0-5]	[0-5]
Others	[0-5]	[0-5]	[0-5]	[0-5]

118. Based on registration figures submitted by the Notifying Party, at EEA level the merged entity will have close to [10-20]% of the market and around [10-20]% over the three-year period between 2008 and 2010 with a [5-10]% increment. The merged entity would thus be third in the market for inter-city buses in the EEA, with major competitors such as the market leaders Iveco and Daimler. The activities of VW and MAN overlap in a number of Member States. Based on registration data, the following national markets for inter-city buses are affected by the proposed transaction: Sweden, Belgium, France, Germany, Austria, Luxembourg and Netherlands, Greece, Italy, Portugal and Spain the UK. With respect to market share data, the Notifying Party argues that market share data of MAN is overstated since all "other buses" that could not be segmented by MAN into the category of city buses and due to missing data were counted as inter-city buses.

119. More importantly, the transaction would lead to limited overlaps as Scania has a less pronounced presence in the inter-city markets. The results of the market investigation

suggest furthermore that most of the large competitors are present and exercise a considerable constraint in these markets. Smaller players also exercise competitive constraint in the inter-city bus markets. Furthermore, as discussed above, there has been significant entry and expansion the markets over the last years. Therefore the transaction is unlikely to significantly alter the competitive landscape in Europe.

(b) National markets

Portugal and Spain

120.[...] inter-city buses were sold in Portugal in 2010 and [...] in Spain.

Table 25: Inter-City buses Portugal (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[80-90]	[80-90]
MAN	[0-5]	[5-10]
Combined	[80-90]	[80-90]
Volvo	[0-5]	[5-10]
Daimler	[5-10]	[0-5]

Table 26: Inter-City buses Spain (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[40-50]	[30-40]
MAN	[5-10]	[0-5]
Combined	[50-60]	[40-50]
Volvo	[10-20]	[40-50]
Daimler	[10-20]	[5-10]
Iveco	[10-20]	[0-5]
Others	[0-5]	[0-5]

121. It is noteworthy that in Portugal the high market share of Scania in the figures submitted by the Notifying Party appear to be mainly due to the fact that the market for intercity buses is very narrow. The Notifying Party reports in its market share data that around [...] intercity buses sold per year are bought essentially by one buyer⁶⁰ who in recent years developed a preference for Scania buses, but who according to its website also operates buses from other suppliers.⁶¹ Furthermore the two largest European competitors are also present in this market. Indeed, customers were unconcerned by the transaction in relation to inter-city buses in Portugal. Only one competitor was concerned.

122. In Spain where the Parties would reach shares of [40-50]% with an increment of [5-10]%, there is strong competition from the usual three EEA competitors (Volvo, Daimler, Iveco) as well as from bodybuilders, such as Alsa, and Irizar. The variety of suppliers is also reflected in the market investigation: 70% of customers are unconcerned in Spain.

123. As a result the Commission considers that the transaction will not give rise to competition concerns in the markets for inter-city buses in Portugal and Spain.

Sweden

124. The market size in Sweden was [...] inter-city buses in 2010.

Table 27: Inter-City buses Sweden (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[5-10]	[10-20]
MAN	[0-5]	[5-10]
Combined	[10-20]	[20-30]
Volvo	[30-40]	[30-40]
Daimler	[40-50]	[20-30]
Autosan	[0-5]	[10-20]
Iveco	[5-10]	[0-5]
Others	[0-5]	[0-5]

⁶⁰ Grupo Barraquero, which operates a number of intercity networks, such as Rede Expresso. The group seems to be the only nation-wide provider of intercity services and seems to be operating a large fleet.

⁶¹ The website shows buses from all the main providers: <http://www.barraqueirotransportes.pt/btransportes/frota.asp>.

125. In *MAN/Scania*, the Commission found that⁶² the allocation of buses to the markets for inter-city buses and coaches is particularly difficult in Sweden due to the specific climatic conditions and the long distances between cities/agglomerations, which leads operators of inter-city bus services in Sweden to often use more luxurious buses that bear several traditional characteristics of coaches. The market investigation in this case did not contradict this view.

126. The clear market leader in the Swedish market for inter-city buses in 2010 was Daimler, with a share of [40-50]% of the market. Over a period of the last three years Volvo was the market leader with around [30-40]%. The Parties' market share in 2010 was [10-20]% and [20-30]% when taken over the three-year period between 2008 and 2010. Further, the Notifying Party submits that the Commission's finding in the *MAN/Scania* market investigation that MAN and Scania are not each other's closest competitors is still applicable today.⁶³ Swedish customers appear to consider Volvo as Scania's closest competitor. Market entry and expansion are furthermore facilitated by the fact that the vast majority of inter-city buses in Sweden are purchased on the basis of public or private tenders.⁶⁴ Furthermore, the majority of customers were unconcerned by the transaction in Sweden.

127. Given the above elements, the Commission therefore considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the market for intercity buses in Sweden.

Belgium, Italy, the Netherlands and the UK

Table 28: Inter-City buses Belgium (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[20-30]	[20-30]
Combined	[20-30]	[30-40]
Iveco	[50-60]	[50-60]
Daimler	[5-10]	[5-10]

⁶² Case No COMP/M.4336 – *MAN/Scania*, para. 176.

⁶³ Case No COMP/M.4336 – *MAN/Scania*, para. 183.

⁶⁴ Form CO para 457.

Temsa	[5-10]	[0-5]
Van Hool	[0-5]	[0-5]
Volvo	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 29: Inter-City buses Italy (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[10-20]	[10-20]
MAN	[0-5]	[0-5]
Combined	[10-20]	[20-30]
Iveco	[60-70]	[50-60]
Daimler	[10-20]	[10-20]
Volvo	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 30: Inter-City buses The Netherlands (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[5-10]	[10-20]
MAN	[10-20]	[0-5]

Combined	[20-30]	[20-30]
Volvo	[0-5]	[5-10]
Daimler	[60-70]	[60-70]
Iveco	[10-20]	[0-5]
Others	[0-5]	[0-5]

Table 31: Inter-City buses United Kingdom (% shares 2008 – 2010)
Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[5-10]	[10-20]
MAN	[5-10]	[5-10]
Combined	[10-20]	[20-30]
Volvo	[70-80]	[70-80]
Others	[5-10]	[5-10]

128. In Belgium [...] inter-city buses were sold in 2010. Scania's activities are limited in Belgium. The combined market share of the merged entity would be [30-40]% with an increment of only [0-5]%. Furthermore Iveco is the clear market leader with a market share consistently above [50-60]%. Daimler, also has a strong presence and a number of other competitors including Volvo and Temsa are also active in the market.

129. In Italy the market size of inter-city buses in 2010 was [...]. MAN's activities are limited in Italy with an average share over the last three years of [5-10]%. The merged entity would have a share of [20-30]%. Iveco is the clear market leader with an average market share of more than [50-60]% in the last three years. Daimler is also an important player in the market with a market share consistently around [20-30]%. Volvo and a number of smaller competitors are also present.

130. In the Netherlands the number of inter-city buses sold in 2010 was [...]. Daimler is the clear market leader with a market share of more than [60-70]% over the last three years. Further, the market size is relatively small and is therefore – because of tenders and lumpy orders – very volatile. The merged entity would have a share of [20-30]% in the market with two other large European competitors (Volvo and Iveco) as well as a tail of smaller competitors.

131. In the UK the number of inter-city buses sold in 2010 was [...]. The strongest market player is Volvo with a market share of [70-80]% over the three last year. The merged entity would have a share of [20-30]% with a number of others also present in the market.

132.Indeed, given the moderate combined market share and the number of alternative suppliers, no customers were concerned by the Transaction in Belgium, Italy, the Netherlands or the UK.

133.For the above reasons, the Commission considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction would not give rise to competitive concerns in the market for intercity buses in Belgium and Italy, the Netherlands and the UK.

Germany, Austria, France, Greece and Luxembourg

Table 32: Inter-City buses Germany (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[20-30]	[10-20]
Combined	[20-30]	[10-20]
Daimler	[50-60]	[60-70]
Iveco	[5-10]	[5-10]
Volvo	[0-5]	[0-5]
Temsa	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 33: Inter-City buses Austria (% , shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-10]	[0-5]
MAN	[0-10]	[20-30]
Combined	[0-10]	[20-30]
Daimler	[70-80]	[50-60]

Iveco	[20-30]	[10-20]
Temsa	[0-5]	[5-10]
Volvo	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 34: Inter-City buses France (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[10-20]	[10-20]
Combined	[10-20]	[10-20]
Iveco	[40-50]	[40-50]
Daimler	[20-30]	[30-40]
Temsa	[5-10]	[5-10]
Volvo	[0-5]	[0-5]
VDL	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]
Others	[0-5]	[0-5]

Table 35: Inter-City buses Greece (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-10]	[10-20]
MAN	[0-10]	[10-20]
Combined	[0-10]	[30-40]
Isuzu	[0-5]	[10-20]
Daimler	[90-100]	[10-20]
Volvo	[0-5]	[0-5]
Temsa	[0-5]	[5-10]

Others	[0-5]	[20-30]
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Table 36: Inter-City buses Luxembourg (% shares 2008 – 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010	2008 – 2010 (average)
Scania	[0-5]	[0-5]
MAN	[10-20]	[10-20]
Combined	[10-20]	[10-20]
Daimler	[70-80]	[70-80]
Iveco	[0-5]	[5-10]
Temsa	[0-5]	[0-5]
Van Hool	[0-5]	[0-5]

134. In Germany Scania has limited activities (below [0-5]% market share from 2006), so that the overlap between the Parties is insignificant. Further, the combined entity would face strong competition from Daimler which is the clear market leader with a market share consistently above [50-60]% in the last three years. A number of smaller competitors are also present.

135. In the Austrian market for inter-city buses Daimler is the clear leader with constant market share of more than [50-60]% in the last three years. MAN is the second strongest player, though is considerably smaller and the overlap with Scania is insignificant. Scania only had activities and thus a market share (below [0-10]%) in 2008 and since then had no activities in the area of inter-city buses in Austria. Therefore the transaction would not change the competitive landscape in Austria.

136. In France, the number of inter-city buses sold in 2010 was [...]. Iveco and Daimler are clear market leaders with [40-50]% and [30-40]% respectively. The merged entity with [10-20]% would be number three in the market along with a number of smaller suppliers exerting sufficient competitive constraint.

137. In 2010 only [...] inter-city bus was sold in Greece. Based on three years data, the merged entity would become the market leader with a share of [30-40]%. However there are three other strong players present, Daimler, Temsa and Isuzu as well as a number of smaller players.

138. In Luxembourg the number of inter-city buses sold in 2010 was [...]. Daimler is the clear market leader in Luxembourg. Man has [10-20]% share, whereas Scania had only minimal sales in Luxembourg in 2009 and none in 2010.

139.Indeed, given the moderate combined market share and the number of alternative suppliers, no customers were concerned by the transaction in any of these countries.⁶⁵

140.The Commission for the above reasons considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the market for intercity buses in Belgium and Italy, the Netherlands and the UK.

Coordinated effects

141.The Commission also considered whether the merger would increase the risk for co-ordinated effects. As for city buses, inter-city buses are technically complex products which are produced to meet individualised customer specifications. This heterogeneity of the products makes the market less transparent. In addition, inter-city buses are also bought by fleet operators at irregular intervals and in different quantities ("lumpy orders") making co-ordination mechanisms not sustainable over time.

142.As a result the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market due to coordinated effects.

Coaches

(a) EEA

143.At EEA level [...] coaches were sold in 2010. The table below presents the Parties and their main competitors. Whereas MAN is a fully integrated manufacturer of all types of buses. Scania, in contrast, does not itself build the bodies of the coaches it sells in the EEA, but co-operates for this purpose with bodybuilders.

Table 37: Coaches EEA (% , registrations 2010)

Source: Notifying Party, based on registration data of national authorities

EEA	2008	2009	2010
Scania	[5-10]	[5-10]	[5-10]
MAN	[10-20]	[10-20]	[10-20]
Combined	[20-30]	[20-30]	[10-20]
Daimler	[30-40]	[30-40]	[30-40]
Volvo	[10-20]	[10-20]	[10-20]
Iveco	[10-20]	[10-20]	[10-20]
VDL	[5-10]	[5-10]	[5-10]

⁶⁵ Although two competitors raised concerns in Germany about less competition.

EEA	2008	2009	2010
Temsa	[0-5]	[5-10]	[0-5]
Van Hool	[0-5]	[0-5]	[0-5]
BMC	[0-5]	[0-5]	[0-5]
King Long	[0-5]	[0-5]	[0-5]
Otokar	[0-5]	[0-5]	[0-5]
Isuzu	[5-10]	[0-5]	[0-5]
Alexander Dennis	[0-5]	[0-5]	[0-5]
Autosan	[0-5]	[0-5]	[0-5]
Ayats	[0-5]	[0-5]	[0-5]
Solbus	[0-5]	[0-5]	[0-5]

144. The merged entity would become the second largest coach manufacturer in the EEA after Daimler. Iveco and Volvo are the two other strong pan-European players. There are also a number of less integrated and smaller coach manufacturers such as VDL, Van Hool and Temsa as well as a number of bodybuilders which all compete against each other in the end customer markets. All these players compete against each other on the end-customer markets for coaches. In addition, many body builders are customers of the five large integrated coach manufacturers with respect to the supply of chassis (see below) and also their co-operation partners with respect to the provision of body building services.

(b) National markets

145. On the basis of 2010 registration figures, the proposed concentration would lead to affected markets for coaches in the UK, Ireland, Spain, Portugal, Sweden, Denmark, Poland, Germany, Austria, Italy and Cyprus, Czech Republic and Slovakia. In all other Member States, the combined market share of MAN and Scania is either less than 15% or no addition of market shares occurs. The affected markets are analysed in more detail in the following sections.

Denmark and Cyprus

146. [...] coaches were sold in Denmark in 2010 and [...] in Cyprus. Given the low number of sales in Cyprus the market shares in Cyprus have to be treated with caution. As the table however shows, the merged entity would face competition from Daimler and Volvo Iveco and VDL also have significant market shares.

Table 38: Coaches Denmark (% shares 2010)

Source: Notifying Party based on registration data of national authorities

Company	2010
Scania	[30-40]
MAN	[10-20]
Combined	[40-50]
Daimler	[10-20]
Volvo	[10-20]
VDL	[10-20]
Iveco	[0-5]
Temsa	[0-5]
Others	[0-5]

147. In *Cyprus* the coach market is very small and particularly so in recent years (with sales consistently below [...] units). The Notifying Party argues that the market shares based on registration data are particularly distorted in this Member States because there are some relatively recent imports coming in from the UK and many second-hand vehicles are sold, given that Cyprus is a left-hand drive market. In any event, the table shows that there are several competitors active in selling coaches in Cyprus (Daimler and Volvo) providing sufficient competitive choice for customers.

Table 39: Coaches Cyprus (% , shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[20-30]
Combined	[30-40]
Volvo	[10-20]
Daimler	[10-20]
Iveco	[5-10]
VDL	[0-5]
Temsa	[0-5]
King Long	[20-30]
Others	[0-5]

148. The Commission therefore considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the markets for coaches Denmark and Cyprus.

Ireland

Table 40: Coaches Ireland (% , shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[20-30]
Combined	[30-40]
Volvo	[20-30]
Daimler	[20-30]
VDL	[0-5]
Iveco	[0-5]
Van Hool	[0-5]

149. The *Irish coach market* has been very small over the past years and consisted of only [...] coaches in 2010. The market share of the Parties in 2010 represents only [...] registered units. There are several other competitors active in selling coaches: Daimler, VDL, Van Hool, Volvo and Temsa. According the Notifying Party, Plaxton, although not represented in the registration data, is also active in Ireland. Also, no customers were concerned by the transaction in Ireland. Given the above, the Commission considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the markets for coaches in Ireland.

Slovakia, Czech Republic and Poland

150. In Poland, Czech Republic and Slovakia [...], [...] and [...] coaches were sold respectively in 2010.

Table 41: Coaches Slovakia (% , shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[20-30]
MAN	[10-20]
Combined	[30-40]
Daimler	[20-30]
Iveco	[20-30]
VDL	[5-10]
BMC	[0-5]
Isuzu	[5-10]
Otokar	[0-5]
SOR	[0-5]
Yutong	[10-20]
Others	[0-5]

151. In *Slovakia* the combined entity will be the market leader post-transaction. However, as the table shows, two of the three major global competitors are present in Slovakia with a sizeable market share. In addition, VDL and a number of other competitors are present in the Slovak market.

Table 42: Coaches Czech Republic (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[10-20]
Combined	[20-30]
Daimler	[40-50]
Iveco	[10-20]
Volvo	[5-10]
VDL	[0-5]
Isuzu	[0-5]

Otokar	[0-5]
Others	[5-10]

152. In the *Czech Republic*, the merged entity would have a combined market share of [20-30]% however Daimler is the clear leader. In addition, all three major European competitors are active in the Czech Republic, as well as VDL.

Table 43: Coaches Poland (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[10-20]
Combined	[30-40]
Volvo	[0-5]
Daimler	[40-50]
Iveco	[0-5]
VDL	[5-10]
Temsa	[0-5]
Van Hool	[0-5]
Autosan	[5-10]
Isuzu	[0-5]
Solbus	[0-5]
SOR	[0-5]
Solaris	[0-5]

153. In *Poland* the merged entity would have a combined share of [30-40]% and as second strongest player, would face strong competition from Daimler, Volvo, Iveco, and VDL.

154. Given the number of alternative sources, no customer was concerned by the transaction in any of these countries.

155. For the above reasons, the Commission considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the markets for coaches in the Czech Republic, Slovakia or Poland.

Table 44: Coaches Italy (% , shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[5-10]
Combined	[10-20]
Daimler	[30-40]
Iveco	[10-20]
King Long	[5-10]
VDL	[5-10]
BMC	[5-10]
Temsa	[0-5]
Volvo	[0-5]
Isuzu	[0-5]
Van Hool	[0-5]
Ayats	[0-5]
Otokar	[0-5]
Others	[0-5]

156. In *Italy*, [...] coaches were sold in [...]. The merged entity would have a combined market share of consistently below [20-30]% for the past three years. Two major European competitors (Daimler and Iveco with Volvo also present) have a strong position in the coach markets in Italy and constitute a sufficient competitive constraint on the merged entity. Additional competition emanates from Temsa and VDL, two smaller competitors having gained significant ground in recent years. Finally, the Chinese bus manufacturer King Long has also successfully entered the Italian coach market illustrating well that successful entry is possible.

Table 45: Coaches United Kingdom (% , shares 2010)

Source: Notifying Party, based on registration data of national authorities

UK	2010
Scania	[10-20]%
MAN	[5-10]%

UK	2010
Combined	[10-20]%
Volvo	[20-30]%
Daimler	[20-30]%
VDL	[5-10]
Van Hool	[0-5]%
Temsa	[0-5]%
Alexander Dennis	[0-5]%
Iveco	[0-5]%
King Long	[0-5]%
BMC	[0-5]%
Other	[0-5]%

157. The market size in the UK in 2010 was [...]. On the basis of registration data, the merged entity would achieve a market share of around [10-20]% with both Volvo and Daimler leading the market with a market share of just below [30-40]%. There are a number of other smaller competitors also active in this market.

Table 46: Coaches Spain (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[5-10]
MAN	[10-20]
Combined	[20-30]
Volvo	[10-20]
Daimler	[20-30]
Iveco	[20-30]
VDL	[0-5]
BMC	[0-5]
Temsa	[0-5]
Van Hool	[0-5]

Others	[0-5]
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158. In *Spain* [...] buses were sold in 2010. The merged entity with a combined share of [20-30]% would face significant competition from the other three major coach and chassis manufacturers, Iveco, Daimler, and Volvo. Scania does not play a significant role as regards sales of complete coaches, and its sales mainly reflect sales of chassis sold to bodybuilders.⁶⁶

Table 47: Coaches Portugal (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[5-10]
MAN	[10-20]
Combined	[20-30]
Volvo	[30-40]
Daimler	[30-40]
Iveco	[10-20]

159. In *Portugal* the market size in 2010 was [...] coaches. The merged entity would have a combined share of [20-30]% behind Volvo and Daimler. Considering all types of sales to coach customers (complete coaches and chassis) in Portugal, Volvo, Daimler and Iveco are well established on the market and have significant networks of service outlets across Portugal allowing them to effectively compete with MAN and Scania.

160. According to the Notifying Party, competitive pressure on coach manufacturers also emanates from bodybuilders. The Notifying Party argues that a significant portion of MAN's market share in Spain and Portugal can be attributed to chassis registered with MAN which are then built into complete coaches by a bodybuilder. In 2010, for instance, MAN sold only one single integral bus in Spain. The market investigation indicates this appears to be the case.

Table 48: Coaches Sweden (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[10-20]
MAN	[5-10]

⁶⁶ Form CO para 498.

Combined	[20-30]
Volvo	[40-50]
Daimler	[20-30]
Iveco	[0-5]
VDL	[5-10]
Autosan	[0-5]
Ayats	[0-5]
King Long	[0-5]
Temsa	[0-5]
Van Hool	[0-5]
Others	[0-5]

161. In *Sweden*, the market size for coaches in 2010 was [...]. On the basis of registration data, the combined entity achieved a market share of around [20-30]% in 2010 (but showing significantly lower market shares for 2008 ([10-20]%) and 2009 ([10-20]%). Post-transaction Volvo and Daimler remain market leaders in Sweden having achieved a market share of around [40-50]% and [20-30]%, respectively. There are also a number of other smaller competitors.

162. Indeed, the majority of customers were unconcerned by the transaction in each of these Member States.

163. The Commission therefore considers that there will be sufficient competitive constraint on the merged entity post-merger and that the transaction therefore does not give rise to competitive concerns in the markets for coaches Italy, UK, Spain, Portugal or Sweden.

Germany and Austria

Table 49: Coaches Germany (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[0-5]
MAN	[20-30]
Combined	[20-30]

Daimler	[50-60]
VDL	[5-10]
Temsa	[0-5]
Iveco	[0-5]
Volvo	[0-5]
Van Hool	[0-5]
Isuzu	[0-5]
Others	[0-5]

Table 50: Coaches Austria (% shares 2010)

Source: Notifying Party, based on registration data of national authorities

Company	2010
Scania	[0-5]
MAN	[10-20]
Combined	[10-20]
Volvo	[10-20]
Daimler	[50-60]
Iveco	[0-5]
VDL	[0-5]
Temsa	[0-5]
Van Hool	[0-5]
Others	[0-5]

164.[...] coaches were sold in Germany in 2010 while [...] were sold in Austria. In both countries the merged entity will face a very strong market leader, Daimler with a share in excess of [50-60]%. In addition, Scania is a small player in Germany and Austria with only [0-5]% and [0-5]% respectively. Also Volvo and Iveco are present on the German coach market. With regard to Austria, in addition to Daimler, Volvo has a strong presence and other players (Van Hool, VDL) are also active. No customers were concerned about the transaction in either country. For these reasons, the Commission therefore considers that the transaction is unlikely to give rise to competitive concerns in Germany or Austria.

Coordinated effects

165. The Commission has also considered whether the merger would increase the risk of coordinated effects. Coaches are technically complex products which come in a large number of varieties and specifications. The heterogeneity of the products makes the markets for coaches rather non-transparent. Also order sizes vary from the sale of a single coach to the sale of many coaches to operators of larger fleets and individually negotiated rebates are common. Furthermore, smaller competitors such as Temsa and Van Hool are now present in many Member States across EEA market, making sustainable coordinated market behaviour of the leading suppliers less likely.

166. As a result the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market due to coordinated effects in the coach market.

(ii) *Chassis*

Relevant product market

167. Chassis are half-finished products consisting of the frame components, the driver's station and the power train (engine, transmission, driveshaft, axles and suspension) which are used for constructing a finished bus or coach. When chassis manufacturers (mainly the major integrated bus manufacturers) do not produce the full bus or coach within their own group, they either sub-contract an external company specialised in the body work of buses ("body builders") to build the body for them, or they sell the chassis to a body builder who performs the body work and sells the complete bus or coach to the end customer under its own name.

168. The Notifying Party submits that there is no upstream chassis product market, as the bodybuilder's role is limited in Europe⁶⁷. In the *MAN/Scania* decision the Commission assessed a possible distinct market for chassis for buses and coaches which is upstream from the bus and coach market but ultimately left the scope of this open⁶⁸.

169. The market investigation in this case did not lead the Commission to reconsider its previous finding. In particular, based on the data submitted by the Notifying Party, and gathered during the investigation, although their role is diminishing, still close to 1/5th of the European buses are produced by body builders⁶⁹. It appears that in Europe bodybuilders are less present in production of inter-city (covering 13% of sales of chassis) and city buses (15% of sales of chassis)⁷⁰, whereas they appear to be strongest in coaches: 37% of sales of chassis for coaches in the EEA are to bodybuilders. Their strength varies in different Member States. Whereas they have a strong presence in Spain, Portugal, Italy, the UK and Belgium, in the other Member States they have few sales.⁷¹

⁶⁷ Form CO, paragraph 376

⁶⁸ Case No COMP/M.4336 – *MAN/Scania*, para. 31 et seq.

⁶⁹ Form CO, Annexs 45 and 50.

⁷⁰ The figures were supplied by Volkswagen on the basis of registration data.

⁷¹ Form CO, Annexs 45 and 50.

170. The Commission also investigated whether a market for the supply of chassis should be further sub-divided along technical lines e.g. differentiating between conventional, monoque and semi-monoque. The first is typically used for coaches, the second for city buses that usually have a low-floor and the third for inter-city buses. The Notifying Party argues that there is no reason to distinguish between different these types of chassis since there is no specific market for these products.⁷² Although this question was left open by the Commission in *MAN/Scania*, the Commission considered that there is some but not full substitutability on the demand side since certain types of chassis are suited to specific end uses. The Commission however noted that supply side substitutability is higher. Almost all major chassis manufacturers produce and supply a range of chassis types with different technical characteristics and the manufacturers compete against each other across the segments.⁷³ The market investigation in this case found that most chassis manufacturers produce and supply a range of chassis types with different technical characteristics. The market investigation also suggests that these different types of chassis are converging so that suppliers are phasing out having a wide range of types and rather adapt their product to individual customer specifications. For the purposes of the present decision, the question can, however, be left open as even on the basis of a sub-segmentation, the transaction would not raise serious doubts as to its compatibility with the internal market.

171. There are five options for customers to buy a bus or a coach.

- *Option 1*: customers acquire a complete bus or coach from an integrated bus manufacturer (such as Scania, VW, Iveco or Volvo) who produced the entire vehicle within its own group;
- *Option 2*: customers may purchase a complete bus or coach from a partially integrated bus/coach manufacturer (such as Solaris) which produced the chassis and did body work but sourced the engine from a third party.
- *Option 3*: customers acquire a complete bus or coach from a chassis manufacturer (usually one of the major bus manufacturers) who procures the assembly of the body from an external body builder (sub-contracting);
- *Option 4*: customers acquire a complete bus or coach from a body builder who sources the chassis from a chassis manufacturer;
- *Option 5* ("two-invoice system"): customers acquire a bus or coach assembled by a body builder through two separate contracts: one with a chassis manufacturer for buying the chassis, and another with a body builder for the body work⁷⁴.

172. In *MAN/Scania*, the Commission considered that buses/coaches sold under option 1 and option 3 (without considering option 2) did not belong to the chassis market, as the customers buy a finished product, a bus or a coach, either integrally produced by the bus manufacturer or sub-contracted to a bodybuilder. Under option 4, the chassis is supplied by the chassis manufacturer to the bodybuilder who then produces and sells the finished product. Thus, in *MAN/Scania*, the Commission considered whether chassis sold directly

⁷² Form CO, paragraph 545.

⁷³ Case No COMP/M.4336 – *MAN/Scania*, para. 37.

⁷⁴ Option 4 ("two-invoice system") is not common outside the Iberian Peninsula.

to end-customers under the two-invoice system (option 5) belong to the upstream chassis market but ultimately left the question open.⁷⁵ The Notifying Party submits that options 4 and 5 should belong to the chassis market and that there should be no separate market for the sale of chassis to final bus customers since options 4 and 5 have become very rare in the EEA⁷⁶. In any event the issue can be left open since on any market definition the transaction will not raise serious doubts as to its compatibility with the internal market.

173. Therefore as in *MAN/Scania*, in this case the question whether chassis sales directly to end customers should be added to the upstream market for chassis supplies can be left open since the issue does not substantially change the competitive assessment.

Relevant geographic market

174. As the Notifying Party submits that there is no upstream chassis product market, it does not take a view as to its geographic scope since it argues that the two purchase options have become very rare in the EEA. In *MAN/Scania*⁷⁷, the Commission considered the product market for the supply of chassis to be EEA-wide in scope. This was mainly due to low transportation costs and the fact that industry-to-industry transactions are concerned. In addition, many purchasers of chassis (body builders) source them across the whole EEA and could switch to other European suppliers of chassis. The market investigation in this case confirms this approach.

Competitive assessment

175. Total sales of chassis to bodybuilders in the EEA was 5525 (made up of [...] of chassis for city buses, [...] of chassis for inter-city buses and [...] of chassis for coaches). Comparing to the total sales of buses of 26 293 ([...] city buses, [...] inter-city buses and [...] coaches) in 2010, buses built and sold by body-builders represent 21% of the market.⁷⁸ It appears that in Europe bodybuilders are less present in production of inter-city (covering 13% of sales of chassis) and city buses (15% of sales of chassis)⁷⁹, whereas they appear to be strongest in coaches: 37% of sales of chassis for coaches in the EEA are to bodybuilders. The table below presents the size of the market for chassis as well as its potential sub-segments. It also presents the sales of the Parties.

Table 51: Market for Chassis Sold on a Stand-Alone basis to Body-Builders (2006-2010)

*Source: Notifying Party*⁸⁰

⁷⁵ Case No COMP/M.4336 – *MAN/Scania*, para. 33 et seq.

⁷⁶ Form CO, paragraph 376.

⁷⁷ Case No COMP/M.4336 – *Man/ Scania*, para. 58.

⁷⁸ Source: Notifying Party.

⁷⁹ The figures were supplied by Volkswagen on the basis of registration data.

⁸⁰ Form Co, Annexes 45 and 50.

Bus market - EEA		2006	2007	2008	2009	2010
Overall	Buses sold to end customers	30534	30519	32380	28678	26292
	Total chassis market	8344	7885	7444	6550	5525
	Parties' sales	3023	3061	3231	2884	2305
City	Buses sold to end customers	[...]	[...]	[...]	[...]	[...]
	Total chassis market	[...]	[...]	[...]	[...]	[...]
	Parties' sales of chassis	[...]	[...]	[...]	[...]	[...]
Intercity	Buses sold to end customers	[...]	[...]	[...]	[...]	[...]
	Total chassis market	[...]	[...]	[...]	[...]	[...]
	Parties' chassis sales	[...]	[...]	[...]	[...]	[...]
Coaches	Coaches sold to end customers	[...]	[...]	[...]	[...]	[...]
	Total chassis market	[...]	[...]	[...]	[...]	[...]
	Parties' chassis sales	[...]	[...]	[...]	[...]	[...]

176. According to the data of the Notifying Party, the main suppliers of chassis in Europe are Scania (with 24%), Volvo (with 33%), MAN (with 17%), Iveco (with 11%), and Daimler (with 11%) along with the smaller suppliers VDL and Alexander Dennis. The merged entity would have a share of 42% of sales of chassis overall in the EEA.

Table 52: Chassis: EEA market shares based on supplied units (2008 -2010)⁸¹

Company	Supplied Units 2008	Market Share 2008	Supplied Units 2009	Market Share 2009	Supplied Units 2010	Market Share 2010
Scania	1889	25%	1650	25%	1352	24%
MAN	1342	18%	1234	19%	953	17%
Combined	3231	43%	2884	44%	2305	42%
Volvo	2499	34%	2290	35%	1825	33%
Iveco	870	12%	657	10%	581	11%
Daimler	555	7%	447	7%	608	11%
VDL	266	4%	254	4%	190	3%
Alexander Dennis	23	0%	18	0%	16	0%
Total	7444		6550		5525	

177. Although the merged entity's market shares of sales of chassis to body-builders is sometimes considerable, their share to end customers is around 21% in the EEA and plays a role mainly in only a limited number of Member States for historical reasons: in Spain, Portugal, Italy, the UK and Belgium. The table below presents the sales of the Parties and their main competitors on a national basis.

⁸¹ Form CO para 539.

Table 53: Chassis sales and shares – City, Inter-city and Coach (2010) - EEA

BUS TYPE	City	City	Inter-City	Inter-City	Coach	Coach
MEASURE	Units	Shares	Units	Shares	Units	Shares
Scania	[...]	[30-40]	[...]	[20-30]	[...]	[10-20]
MAN	[...]	[10-20]	[...]	[40-50]	[...]	[10-20]
Combined	[...]	[50-60]	[...]	[70-80]	[...]	[20-30]
Volvo	[...]	[40-50]	[...]	[30-40]	[...]	[20-30]
VDL	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Daimler	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]
Iveco	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]
Alexander Dennis	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]

178. Even in these Member States it seems that the primary choice of customers is the chassis, the part of the bus which is the most vulnerable and for which a good service network is indispensable. This is also the explanation for the two-invoice system. Hence, the downstream competition is mainly driven by the integrated manufacturers. The data also show that the proportion of buses sold by bodybuilders compared to buses sold by integrated bus manufacturers decreased from 27% in 2006 to 21% in 2010. Consequently, any potential harm to body-builders is unlikely to harm final consumers.

179. The Parties' market position would not substantially change except for the potential submarket for chassis for inter-city buses where the Parties' combined market share is [70-80]%. However, as the data show this segment overall is shrinking in the last 5 years and even these total sales cover only 9% of the overall inter-city bus sales in the EEA. More importantly the market investigation has shown that the high market share is mainly driven by a sole contract with one school bus supplier in France who procures more than [...] buses from MAN. Without that contract, the combined market share of the parties would be significantly below 50%. Finally, in relation to coaches the combined market share is [20-30]%.

180. Also, body-builders participating in the investigation did not raise concerns with one exception about the effect of the transaction⁸². In particular, it appears that they consider they have enough suppliers given the presence of three other strong integrated competitors as well as two smaller competitors. Furthermore, all major chassis manufacturers further indicated that they have spare capacity and could increase their production of various types of chassis by significant amounts.

⁸² Although some integrated bus suppliers raised concerns.

181. The Commission does not therefore consider it likely that the proposed concentration would raise serious doubts as to its compatibility with the internal market on the market for the supply of chassis to body builders.

(iii) Bus engines

182. VW, MAN and Scania produce diesel engines used in the street-bound vehicles, i.e. trucks, buses, and cars and small commercial vehicles. MAN (but not Scania) sells bus engines to bus manufacturers who then manufacture the chassis and the body themselves. Thus there is a vertical overlap between the manufacturing complete buses and non-captive sales of bus engines by MAN.

183. MAN's market share on the overall on-highway diesel engines market amounts to [0-5]% in the EEA. According to the Notifying Party, the engines that MAN provides to bus manufacturers are engines with a power output between 151-400 kW. The table below illustrates MAN's market share with respect to its sales of the on-highway diesel engines to third parties split by power range:

Table 54: MAN's Sales (Units and Shares) of On-Highway Diesel Engines 2007-2010

Source: Notifying Party

Power Range	151-200kW	201-300kW	301-400kW
2010			
Units	[...]	[...]	[...]
Market Share	[0-5]	[10-20]	[90-100]
2009			
Units	[...]	[...]	[...]
Market share	[0-5]	[5-10]	[10-20]
2008			
Units	[...]	[...]	[...]
Market share	[0-5]	[0-5]	[20-30]
2007			
Units	[...]	[...]	[...]
Market share	[0-5]	[0-5]	[30-40]

184. The Notifying Party submits that it is unable to provide its shares of bus engines only. However the sale of separate bus engines is a relatively small business and volumes are

low based on IESG's estimates. MAN's apparently high market shares therefore only represent a limited volume of products ([...] units). It can also be observed that MAN's market shares for that segment were significantly lower remaining below 25% in 2007, 2008 and 2009, indicating that demand for those engines is volatile. The Notifying Party submits⁸³ that this is largely due to the fact that city and inter-city buses, for which those engines are primarily used, are typically sold via tenders and are thus subject to "lumpy orders" also with respect to engines. Indeed, MAN's large market share for 2010 can be explained by one single tender won by one of the main body builders in Europe, amounting to [...] buses.

185. Whereas customers were mostly unconcerned by the transaction, two bus manufacturers of 15 who replied indicated that the merged entity may, post-transaction be able to restrict availability of bus engines. However, the market investigation indicates that a successful foreclosure is unlikely for the following reasons: (i) MAN is not a major player with respect to supply of bus engines as non-captive sales of MAN's main competitor for bus engines are significantly higher, (ii) there are several alternative suppliers of diesel bus engines, including both the integrated bus producers (i.e. Iveco, DAF,) and non integrated suppliers (Deutz, and Cummins) (iii) the market investigation indicated that most suppliers would be able to increase their production capacity. Therefore, it is unlikely that the merged entity would have the incentive or ability to foreclose its downstream competitors.

186. The Commission therefore considers it unlikely that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to bus engines.

(C) Diesel engines

Relevant product market

187. Diesel engines generate rotary motion which can be used in a large variety of applications. The choice of engine for an intended use depends on a number of criteria, including power, size, weight, speed and cost.

188. The Commission has previously considered that diesel engines can be segmented according to end use into⁸⁴: (i) industrial engines (including for construction, agriculture, material handling, and earth moving equipment) (ii) on-highway trucks engines (for light, medium and heavy duty trucks, and other commercial vehicles), (iii) diesel engines for power generation (i.e. for generator sets: 'Gen-sets') and (iv) diesel engines for marine applications (engines on ships). The Commission also previously distinguished engines for railway applications.⁸⁵ The market investigation largely confirmed the delineation of diesel engines into these categories.

⁸³ Submission of Notifying Party of 5 September 2011.

⁸⁴ This segmentation is similar to that used by the Commission in Case IV/M.1094 – *Caterpillar/Perkins Engines*, para. 14; case COMP/M.4336 – *MAN/Scania*, paragraph 39; case COMP/M. 5157 *Volkswagen/Scania* paragraph 18, case COMP M.6172- *Daimler/Rolls-Royce/Tognum/Bergen*, para 23.

⁸⁵ COMP/M.2127 – *DaimlerChrysler/Detroit Diesel*, 9 October 2000, para 20.

189. The activities of the Parties overlap only in respect of industrial engines, engines for power generation and engines for marine applications.⁸⁶
190. According to the Notifying Party *diesel engines for marine applications* can be segmented into marine propulsion⁸⁷ engines and marine auxiliary⁸⁸ engines.⁸⁹ Furthermore, the Notifying Party, in line with Commission findings in *Volkswagen/Scania*⁹⁰, argues for a separation of the propulsion marine engines market into leisure and commercial use, as volume and displacement of the engines used for commercial and leisure boats differ, and different emission legislation and certification requirements apply to both segments.
191. The market investigation largely confirmed that marine diesel engines could be segmented into the categories mentioned above including the distinctions between commercial and leisure engines.
192. The Commission has previously considered that *industrial diesel engines* may be further segmented based on their respective end-use into in particular engines for (i) construction, (ii) earthmoving applications, (iii) material handling, and (iv) agriculture.⁹¹ The Notifying Party indicates that it does not consider a distinction between earthmoving and construction within the industrial engines as appropriate since engines for both applications are interchangeable.⁹² Most of the respondents to the market investigation indicated that further segmentation of industrial engines, and in particular a distinction between engines for construction, earthmoving and materials handling applications might indeed not be appropriate. Certain respondents point out that (i) the

86 All parties produce on-highway engines: Scania and MAN produces engines for trucks and busses, however Scania's activities in that respect in 100% captive. Volkswagen produces engines for cars and light commercial vehicles.

87 Marine propulsion is the mechanism or system used to move a ship or boat across water.

88 Auxiliary engines are any engines that are not main propulsion engines. They are used for generators, water pumps, air compressors, winches etc.

89 For both propulsion and auxiliary engines a distinction can be made between civil and military, see COMP/M.6172 – *Daimler/Rolls-Royce/Tognum/Bergen*, para 23. The Notifying Party does not consider a distinction between civil and military engines appropriate, since they have identical specifications and distribution channels. In any event such a distinction is not relevant for the present case. According to data submitted by the Notifying party, in 2010 MAN had no sales to the military sector (Notifying Party reply to the request for information of 18.08.2011).

90 COMP/ M.5157 – *Volkswagen/Scania* para. 23. The results of the market investigation in this case indicated that many customers are only active in either the commercial or the leisure segment and since the number of running hours per year is typically lower with engines for the leisure segment.

91 Case IV/M.1094 – *Caterpillar/Perkins Engines*, para. 14. as well as in cases COMP/M.5157 – *Volkswagen /Scania* , para 18; COMP/M.4336 – *MAN/Scania*, para 39.

92 The Notifying Party submits that earth moving equipment is partly used also for construction purposes, and the manufacturers for both kinds of engines are largely the same. Furthermore, manufacturers would not specify whether engines are for earth moving or construction purposes when purchasing them. The Notifying Party also point out that there exist no specifications how to distinguish between the two segments, and there is only one single emission standard for both construction and for earth-moving engines.

base engine is similar for all such applications and the distinction does not relate to technical limitations (ii) there is no commercial practice to distinguish between such sub-categories, consequently no sales or market share data are being collected separately for those three sub-segments.⁹³

193. In past decisions the Commission has further considered that within each end-use application, diesel engines could be further distinguished according to their *power output* capacity but ultimately left open whether such a distinction would be appropriate.⁹⁴

194. The Notifying Party agrees that diesel engines can be distinguished according to the power output. It notes, however, that there is a degree of arbitrariness on how to define the power output ranges i.e. where to draw the line between different ranges. From a demand-side perspective, there is a continuum of substitution and not a clear separation into specific power bands. Sometimes the best substitute would be an engine in another power band with the closest resembling characteristics, and not necessarily the one in the same power band defined for purely statistical purposes.

195. The Notifying Party submits their best estimates on market shares according to the power ranges based on the Commission's previous decision practice⁹⁵, i.e. for the following power ranges. 1.) Below 19 kW; 2.) 19 kW to 37 kW; 3.) 37 to 75 kW; 4.) 75 to 130 kW; 5.) 130 to 560 kW, and 6.) above 560 kW. Since the Commission in some of its decisions referred to even narrower power range segments applied by the International Engine Statistic Group (IESG)⁹⁶, and although the Notifying Party does not consider the rather narrow IESG power ranges as appropriate for market definition purposes, it also presented market data on that basis.

196. The market investigation in principle confirmed that diesel engines can be distinguished according to their power output. It was however inconclusive as to how to define the borders of the power ranges belonging to the same market.

197. Finally, the Commission has previously considered⁹⁷ distinguishing between low speed engines (below 300 rotation per minute "rpm") medium speed engines (300-1000 rpm), and high speed engines (above 1000 rpm). However, such distinction is not relevant for

⁹³ See the responses to the Commission request for information to engine manufacturers (Questionnaire Q 5).

⁹⁴ IV/M.1094 – *Caterpillar/Perkins Engines*, 23 February 1998, paras. 13-14; COMP/M.4336 – *MAN/Scania*, para 39. COMP/M.6083 - *Fiat/GM/VM Motori JV*, para 16.

⁹⁵ See e.g. Case M. 5157 – *Volkswagen/Scania*, para. 34; Case No COMP/M. *Fiat/GM/VM Motori JV*, paras. 13 and 14.

⁹⁶ Case M.6039- *GE/Dresser*; Case M. 6172 *Diamler/Rolls-Royce/Tognum/Bergem*. IESG power ranges relevant for the assessment of his case are as follows: >7.5-15 kW, >15-22 kW, >22-30 kW, >30-50 kW, 51-75 kW, 76-100 kW, 101-150 kW, 151-200 kW, 201-300 kW, 301-400 kW, 401-500 kW, 501-750 kW, 751-1000 kW, etc . There is no overlap between Parties activities above 750 kW.

⁹⁷ Case M. 6172 *Diamler/Rolls-Royce/Tognum/Bergem*, paras 29-31

the assessment of the present case as VW and Scania do not offer engines below 1500rpm.⁹⁸

198. In the present case, the exact definition of the relevant product market for diesel engines can ultimately be left open, since even under narrow product market definitions the proposed transaction would not raise serious competition concerns.

The relevant geographic market

199. The Notifying Party submits, in line with Commission precedents,⁹⁹ that the geographic scope of the market for diesel engines is at least EEA-wide. The market investigation largely confirmed that the geographic scope of markets for diesel engines is at least EEA-wide. The regulatory requirements are largely harmonised. No significant price differences are observed within the EEA. Transportation costs within EEA are insignificant in relation to the values of the engines. Number of respondents to market investigation considered the geographic scope of the market to be world-wide, in particular as engines manufacturers produce them at relatively few location around the world and ships them to customers globally.

200. For the purpose of the present decision, however, the exact definition of the relevant geographic market for the diesel engines can be left open as the proposed transaction would not raise concerns under any alternative.

Competitive assessment

201. The proposed transaction leads to horizontally affected markets for marine diesel engines (propulsion and auxiliary in both the leisure and commercial segment), and for diesel engines for power generation. Furthermore, the Notifying Party could not exclude that affected markets arise in respect of industrial diesel engines for construction, earth moving and material handling applications.¹⁰⁰ The overlaps between the Parties activities relate to diesel engines with a power output between 100-750 kW.¹⁰¹

(i) Marine diesel engines

⁹⁸ Submission of the Notifying Party of 12 August 2011

⁹⁹ COMP/M.4336 – *MAN/Scania*, para. 60. COMP/ M.5157 – *Volkswagen/Scania* para. 60.

¹⁰⁰ All parties produce also on-highway engines (SACNIA and MAN produces engines for trucks and busses, however Scania's activities in that respect in 100% captive. Volkswagen produces engines for cars and light commercial vehicles). The Notifying Party estimates that the Parties combined market shares on the on-highway market for diesel engines amount to approximately [0-5]%.

¹⁰¹ Number of affected market arises due to the segmentation of the diesel engines into power bands. As mentioned above, the Notifying Party put forward that the power-band segmentation based on previous Commission decisions (in particular M. 5157 – *VW/Scania*) i.e. (below 19 kW; .19 kW to 37 kW; 37 to 75 kW; 75 to 130 kW; 130 to 560 kW, and above 560 kW) as one appropriate to analyse the case. For sake of simplicity, those power ranges are further referred to as the power bands or power ranges "proposed by Notifying Party". The Notifying Party also submitted the data based on the IESG segmentation of power band. Those are referred as "IESG power band" or "IESG power ranges". The Commission has analysed both alternatives. It is also noted that the Notifying considered the IESG data of overstating market position of the Parties, due to the fact that IESG produces its statistic based on sales report of its members only, and the IESG membership excludes number of important manufacturers.

202. As regard the segment of all marine diesel engines, an affected market arises for engines with a power output above 560 kW. Should these marine engines all belong to one market, the transaction would result in combined market shares of [30-40]% in the EEA and only [5-10]% worldwide for 2010. The increment due to the transaction is modest both in EEA ([0-5]%) and world-wide ([0-5]%) due to Scania's limited activities. The table below illustrates the Parties' market position for this power range over the last 5 years, as well as average market shares of the Parties for the period during 2006-2010.

Tables 55: Parties' market shares for marine diesel engines in with output power above 560 kW (EEA)

Source: The Notifying Party's estimates

	VW		Scania		MAN		Comb.		Total	
	Units	Market share	Units	Market share	Units	Market share	Units	Market share	Units	Market share
2006	0	0%	[...]	[0-5]%	[...]	[40-50]%	[...]	[40-50]%	[...]	100%
2007	0	0%	[...]	[0-5]%	[...]	[40-50]%	[...]	[50-60]%	[...]	100%
2008	0	0%	[...]	[0-5]%	[...]	[40-50]%	[...]	[40-50]%	[...]	100%
2009	0	0%	[...]	[0-5]%	[...]	[20-30]%	[...]	[20-30]%	[...]	100%
2010	0	0%	[...]	[0-5]%	[...]	[20-30]%	[...]	[30-40]%	[...]	100%
Average	0	0%	[...]	[0-5]%	[...]	[40-50]%	[...]	[40-50]%	[...]	100%

Tables 56: Parties' market shares for marine diesel engines in with output power above 560 kW (world-wide)

Source: The Notifying Party's estimates

	VW		Scania		MAN		Comb.		Total	
	Units	Market share	Units	Market share	Units	Market share	Units	Market share	Units	Market share
2006	0	0%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%	[...]	100%
2007	0	0%	[...]	[0-	[...]	[10-	[...]	[10-	[...]	100%

	VW		Scania		MAN		Comb.		Total	
	Units	Market share	Units	Market share	Units	Market share	Units	Market share	Units	Market share
				5]%		20]%		20]%		
2008	0	0%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	100%
2009	0	0%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	100%
2010	0	0%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	100%
Average	0	0%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	100%

203. As can be observed from the table above, the combined market shares of the Parties in respect of marine diesel engines fluctuated over the last five years, with a noticeable dip in 2009 and 2010. While this may indicate that the other engine manufacturers were increasing their market presence, it also results in the Parties' combined market shares for 2010 being lower than the average market shares for 2006-2010. This is generally also the case for other potential sub-segments of marine diesel engines where affected markets arise. Therefore, the average market shares for the period during 2006-2010 are taken to illustrate the Parties' market position (unless stated otherwise). In few cases when the Parties' combined market shares for 2010 on affected markets are higher than the average market shares for 2006-2010, the Parties' 2010 market shares are also indicated.

204. When taking the average market shares of the Parties for the period 2006-2010, on the potential market segment of all marine engines with a power output above 560 kW the transaction would result in a combined market share of [40-50]%¹⁰² in the EEA and only [5-10]% on a worldwide basis. The increment is minimal and amounts to [0-5]% in EEA and [0-5] % worldwide, due to Scania's limited presence, in particular for engines with a higher power output.¹⁰³

205. *Marine propulsion engines*

206. If the marine diesel engines market is further segmented into propulsion and auxiliary engines and by narrow power bands according to the IESG methodology, the transaction

¹⁰² All market shares refer to average market shares for the period 2006-2010, unless specified otherwise. It is noted that the market shares of the Parties in respect of diesel engines fluctuated over the period of last five years. Therefore the average market shares are taken to illustrate the Parties' market position. It is often the case that the Parties' combined market shares for 2010 are lower than the average market shares for 2006-2010. In few cases of reverse scenario, the Parties' 2010 market shares are indicated.

¹⁰³ If the marine diesel engine market is segmented by power band, the overlap between Parties' activities is confined to Man and Scania, as VW supplies engines falling in entirely different power bands.

leads to affected markets in respect of marine propulsion diesel engines (including both commercial and leisure) for the power range between 501-750 kW with combined market shares of the Parties of [40-50]% in the EEA and [30-40]% world-wide. The Parties' market shares are summarised in table below. Again, increments brought about by the transaction are relatively minor ([0-5]% in EEA, [0-5]% world-wide).

Tables 57: Parties' market shares for diesel engines for marine propulsion application by power band (EEA) Source: IESG (according to Notifying Parties)

EEA 2006-2010 average market shares		101-150	151-200	201-300	301-400	401-500	501-750	751-1000	All segments
Marine propulsion	VW	[5-10]%	[0-5]%	[0-5]%	-	-	-	-	[0-5]%
	Scania	-	-	[0-5]%	[0-5]%	[5-10]%	[0-5]%	-	[0-5]%
	Man	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	[70-80]%	[0-5]%
	Combined	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[40-50]%	[70-80]%	[5-10]%

Tables 58: Parties' market shares for diesel engines for marine propulsion application by power band (Worldwide)

Source: IESG (according to Notifying Parties)

Worldwide 2006-2010 average market shares		101-150	151-200	201-300	301-400	401-500	501-750	751-1000	All segments
Marine propulsion	VW	[5-10]%	[0-5]%	[0-5]%	-	-	-	-	[0-5]%
	Scania	-	-	[0-5]%	[0-5]%	[5-10]%	[0-5]%	-	[0-5]%
	Man	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	[70-80]%	[0-5]%
	Combined	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[70-80]%	[5-10]%

207. Under the power-band segmentation proposed by the Notifying Party, the affected market arises in the segment of propulsion engines (commercial and leisure) with power above 560 kW. The combined market shares of the Parties reaches [50-60]% in EEA and [10-20]% world-wide. The increment added by Scania's sales equals to [0-5]% in the EEA and [0-5]% world-wide.

208. The market shares indicate that the overlaps between Scania and MAN activities in engines for marine propulsion applications are limited. The Parties were unable to provide the market share data distinguishing between the commercial and leisure segment of

marine propulsion engines. However, the Notifying Party submitted and the market investigation confirmed that for most customers MAN and Scania are not close competitors in engines for marine propulsion applications: MAN focuses on fast leisure boats¹⁰⁴, and Scania focuses on the commercial segment.¹⁰⁵ While Scania produces a limited number of engines also for the leisure segment, it is not present in this segment with its own brand. Currently Scania is providing engines for the leisure segment exclusively to Yanmar, which then trades them under its own brand.

209. In line with the above analysis the majority of respondents to the market investigation did not raise concerns as regards the effects on the marine propulsion market.

210. One of the customers of propulsion engines in the leisure segment alleged however that the transaction will lead to the loss of an important potential competitor for marine propulsion engines of 560-882KW for leisure boats. He pointed out that MAN has a particularly strong market position in respect to such engines, which cannot be easily substituted by engines from other manufactures (Volvo, Caterpillar) due to the particular requirements of certain boat builders as to the weight and size of the engine. He also claimed that Scania which traditionally focuses on the professional/commercial sector, recently planned entering that segment of the leisure market with engines substitutable for those of MAN. He presented to the Commission documents of commercial negotiations with Scania and Yanmar on a possible sale of around [...] engines in the leisure segment in which the customer in question is active. The negotiations ultimately broke down.

211. Given that the negotiations broke down after the announcement of the public, bid the Commission carefully investigated the factual background. Based on the information obtained, it appears that the negotiations with the customer in question were an isolated incident. Internal strategy documents from Scania show that [...]. Scania's sales engines for leisure boats cover a limited range from 551-661 kW and merely consist in the supply of engines, under an industrial cooperation agreement, to the engines producer Yanmar which sells them under the Yanmar brand. Additionally, Scania internal documents and the e-mail exchanges between the complaining customer and Yanmar/Scania also show that [...].

212. In conclusion, it appears that it was not Scania's strategy to be a new significant entrant in the leisure propulsion sector, but that the negotiation referred above constituted an isolated case and broke down due to reasons unrelated to the current transaction. The negotiations rather illustrate that despite [...] it was not attractive for Scania to enter.

213. In any event, the Commission also found that in the segment where MAN is allegedly dominant, other players, namely MTU/Tognum, Caterpillar and Volvo, ensure alternative source of supply.

214. Two respondents to the market investigation pointed to Scania's strong position in propulsion marine engines with a power output below 500kW, and suggested that the

¹⁰⁴ The marine engines for leisure boats have typically low annual running hours (less than 200 hours per year), but pronounced demands for their high power to weight-ratio of engines.

¹⁰⁵ The marine engines for commercial vessels have to meet much higher standard as to their reliability (with minimum 1,500 annual running hours) and needs to comply with various international standard that do not apply to engines used on leisure boats.

choice of customers will potentially be reduced after the transaction. However, while one respondent was concerned by the potential increase in prices for Scania engines, the other did not consider that the transaction would result in increased prices, but to the contrary, expects stronger price competition. It also appears that other market players in particular Caterpillar and Cummins offer propulsion diesel engines in that power range. Additionally, the main suppliers of the marine engines confirmed they have free capacity to increase their production of propulsion engines, should the market require.

Marine auxiliary engines

215. Marine auxiliary engines are power generators used on board for other purposes than moving ships. As regards auxiliary diesel engines, the transaction leads to affected markets for several IESG power bands. The table below illustrates the Parties' market position:

Table 59: Parties' market shares for diesel engines for marine auxiliary application by power band (EEA)

Source: IESG (according to the Notifying Party)

EEA		101-150	151-200	201-300	301-400	401-500	501-750	751-1000	All segments
2006-2010 average market shares									
Marine auxiliary	VW	-	-	-	-	-	-	-	-
	Scania	-	[10-20]%	[10-20]%	[10-20]%	[10-20]%	-	-	[0-5]%
	Man	[20-30]%	[30-40]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	-	[10-20]%
	Combined	[20-30]%	[40-50]%	[50-60]%	[50-60] ¹⁰⁶	[30-40]%	[40-50]%	-	[20-30] ¹⁰⁷

Table 60: Parties' market shares for diesel engines for marine auxiliary applications by power band (Worldwide)

¹⁰⁶ This is the affected segment where the average market shares for 2006-2010 are lower than market shares for 2010. The Parties', combined market shares for 2010 in EEA reached [70-80]%. % , [70-80]% in 2009, [40-50]% in 2008, [40-50]% in 2008, [30-40]% in 2006.. The IESG data however suggest that the number of engines sold in this narrow segment is low (i.e. 223 engines within such power range sold in 2010 as against more than 3000 engines in all power ranges).

¹⁰⁷ Parties combined market shares for 2010 amounts to [20-30]%

Source: IESG (according to the Notifying Party)

Worldwide									All segments
2006-2010 average market shares		101-150	151-200	201-300	301-400	401-500	501-750	751-1000	
Marine auxilliary	VW	-	-	-	-	-	-	-	-
	Scania	-	[5-10]%	[0-5]%	[5-10]%	[5-10]%	-	-	[0-5]%
	Man	[0-5]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	-	[5-10]%
	Combined	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	-	[5-10]%

216. Under the segmentation into power bands proposed by the Notifying Party, the affected market arise in respect of power range between 130kW and 560kW. The table below illustrates the Parties' market position for such power range over the last 5 years.

Table 61: Parties market shares for diesel engines for auxiliary applications in the range of 130kW to 560kW

Source: Notifying Party's estimates

	VW		Scania		MAN		Comb.		Total	
	Units	Market share	Units	Market share	Units	Market share	Units	Market share	Units	Market share
2006	0	0%	[...]	[10-20]%	[...]	[20-30]%	[...]	[30-40]%	[...]	100%
2007	0	0%	[...]	[5-10]%	[...]	[20-30]%	[...]	[30-40]%	[...]	100%
2008	0	0%	[...]	[5-10]%	[...]	[10-20]%	[...]	[20-30]%	[...]	100%
2009	0	0%	[...]	[5-10]	[...]	[10-20]%	[...]	[20-30]%	[...]	100%

¹⁰⁸ On a world-wide level, the Parties, combined market shares on this segment for 2010 were [30-40]%; in 2009: [20-30]%, in 2008: [10-20]%, in 2007: [10-20]%, and in 2006: [10-20]%. Again, according to IESG the number of the sold product in such segment is low also on global lever (i.e. 548 engines within such power range sold in 2010 as against more than 7,500 engines in all power ranges).

	VW		Scania		MAN		Comb.		Total	
	Units	Market share	Units	Market share	Units	Market share	Units	Market share	Units	Market share
2010	0	0%	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	100%
Average	[...]	[0-5]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[20-30]%	[...]	100%

217. As the table demonstrates, both MAN's and Scania's market shares are in decline. According to the Notifying Party, this is a result of fierce and increasing competition in the market place. The market investigation indeed confirmed that a number of suppliers operate on the market, including Cummins, Volvo, Yammarr, MTU and Caterpillar/Perkins. Competitors responding to the market investigation confirmed that competition in the auxiliary market is intensifying and the customers benefit from observable downward price pressure. Furthermore, it is noticeable that, for these power bands, the market shares on a world-wide basis are significantly lower, which indicates that MAN and Scania face considerable competitive pressure from suppliers outside EEA. Indeed, during the market investigation the majority of customers did not raise concerns specifically with respect of auxiliary engines. Additionally, the competitors responding to market investigation generally confirmed that there is significant capacity for production of marine engines, including auxiliary engines. One of the main suppliers of marine engines also indicated his interested in extending his production of auxiliary engines.

218. While customers did not express such concerns, out of twelve competitors who replied to market investigation four have claimed that the transaction could at least in the medium term lead to conglomerate effects.¹⁰⁹ They alleged that as a result of the transaction the merged entity will have a broad engine portfolio including both auxiliary and propulsion engines allowing it to engage in bundling strategies, since customers might see as beneficial purchasing propulsion and auxiliary engines form one brand benefitting from the combined after-sale service network of the Parties.

219. The Commission has again carefully investigated this issue, in particular the possibility that the merged entity will engage in bundling practices. The investigation has however shown that such a scenario is unlikely to occur. First, the Parties have submitted evidence that within period 2008-2010, they had [...] common customer.¹¹⁰ Secondly, based on the data from the Parties and the result of the market investigation, it appears that propulsion and auxiliary engines are typically supplied to different customer groups, i.e. propulsion engines to the boat builders, while auxiliary engines in particular for marine Gen-sets are supplied to intermediaries, so-called packagers. Third, MAN auxiliary engines already cover the whole power range in which Scania is active. In this respect, the transaction would not change MAN's ability or incentive to engage in such practices. Despite MAN's already today large product portfolio, complaining competitors were unable to point to any

¹⁰⁹ Replies to Questionnaire to Engine Manufacturers (Questions 91-93).

¹¹⁰ Submission of the Notifying Party of 15 September 2011.

consistent pattern or even individual incidents of bundled sales. Consequently, it can be concluded that it is unlikely that the merged entity would have the ability and incentives to engage in tying practices with significant foreclosure effects in the near future.

220. In light of above, it appears that the proposed transaction will not raise serious doubts as to its compatibility with the internal market in the market for marine engines, or in any of its potential sub-markets.

(ii) Diesel engines for Industrial applications

221. VW/Scania and MAN provide diesel engines for industrial applications. However, the combined activities of the Parties on the market of all industrial engines, even if segmented into the rather narrow IESG power ranges, do not lead to affected markets.¹¹¹

222. If the industrial engines are to be further subdivided based on end-application, overlaps arise as regards construction, earth moving and material handling applications, whereas the Parties' activities do not overlap for agricultural application in EEA.¹¹² As braking down the market in end-use applications does not appear to be a common commercial practice, the Notifying Party was unable to provide estimates of the market shares by end-application.

223. Certain competitors indicated that the merged entity could potentially raise prices for industrial engines and reduce customers choice by streamlining the overlapping product portfolio and/or benefit from its large portfolio. One competitor pointed to the potentially dominant position of the merged entity in V-engines for industrial applications. However, the market investigation overall showed that while the Parties may become a stronger and more efficient competitor customers are not concerned and that there are sufficient number of alternative suppliers of industrial engines, such as Cummins, Volvo Penta, Caterpillar.¹¹³

224. In light of the above, it appears that the proposed transaction will not raise serious doubts as to its compatibility with the internal market in the market for industrial engines, or in any of its potential sub-markets.

(iii) Diesel engines for power generation

225. With respect to engines for diesel Gen-Sets, an affected market would only arise if the diesel GenSets are segmented according to the narrow power bands applied by IESG, and

¹¹¹ According to the Notifying Party, VA, MAN and Scania combined market shares for the overall industrial segment (including railway) do not exceed [10-20] % in EEA and [5-10]% world-wide, including for each IESG power range where the parties' activities overlap. Same holds true for each power segmented proposed by the Notifying Party.

¹¹² On the world-wide market, the Parties combined market shares for agricultural application remains below [5-10]%.

¹¹³ And in particular Caterpillar/Perkins which supplies engines in all relevant power ranges (i.e. power ranges for which Parties' activities overlap), and with sales exceeding those of the Parties. It is also noted that around [...] % of the Parties sales of industrial engines (i.e. around [...] units in 2010) relate to Volkswagen's engines with power range up to 75kW. Neither MAN nor Scania offer such type of industrial engines, and therefore the transaction creates no overlaps for such engines.

only in respect to one such power band, (i.e. 401-500kW) where Parties combined market shares in 2010 was [10-20] % in EEA and [10-20] % world-wide¹¹⁴. Given the moderate combined market shares of the Parties, and low increment resulting from transition due to limited MAN activities (i.e. [0-5] % in EEA and [0-5]% world-wide), the number of other suppliers present on the market (e.g. Perkins, Volvo, Cummins) as well as the lack of concerns during the market investigation, it can be concluded that the transaction will not lead to any anticompetitive effects in the market for diesel engines for power generation.

Overall conclusion for diesel engines

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

VI. CONCLUSION

227. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(signed)

Olli REHN

Member of the Commission

¹¹⁴ Average combined market share of the Parties is [10-20]% in EEA and [10-20]% worldwide