

COMMISSION DECISION

of 14 March 2000

declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement

(Case No COMP/M.1672 Volvo/Scania)

(notified under document number C(2000) 681)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/403/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, as amended by Regulation (EC) No 1310/97⁽²⁾, and in particular Article 8(3) thereof,

Having regard to the Commission Decision of 25 October 1999 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations⁽³⁾,

Whereas:

- (1) On 22 September 1999, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ('Merger Regulation') by which AB Volvo ('Volvo') proposes to acquire control of the whole of Scania AB ('Scania') by way of purchase of shares, within the meaning of Article 3(1)(b) of the Merger Regulation.
- (2) After examining the notification, the Commission concluded that the notified operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the common market, because it could create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial

part of it and in the territory covered by the EEA Agreement. Therefore, on 25 October 1999, the Commission decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

- (3) On 9 December 1999, the Commission adopted decisions pursuant to Article 11(5) of the Merger regulation, because Volvo and Scania had failed to reply within the period fixed to a request for information relating to their competitive position on the markets for heavy trucks and buses. They had been asked to supply that information by 7 December 1999. The parties supplied the requested information on 20 December 1999. Therefore, pursuant to Article 9 of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings⁽⁴⁾, the time periods referred to in Article 10(1) and (3) of the Merger Regulation were suspended for a total of 13 days.

I. THE PARTIES

- (4) Volvo is registered in Sweden. Through its shareholdings in companies in the Volvo group, Volvo is primarily active in the manufacture and sale of trucks, buses construction equipment, marine and industrial engines, as well as aerospace components. Volvo's principal business units include (a) trucks (manufacture of heavy trucks weighing more than 16 tonnes as well as medium-heavy trucks, between 7 and 16 tonnes, and a range of related services and financing); (b) buses (manufacture of

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrected version: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ OJ C 154, 29.5.2001.

⁽⁴⁾ OJ L 61, 2.3.1998, p. 1.

buses and bus chassis for city, intercity and tourist purposes); (c) marine and industrial engines (through Volvo Penta corporation, a wholly-owned subsidiary, Volvo develops, manufactures, and markets drive systems for marine and industrial applications); (d) construction equipment (manufacture and sale of a variety of construction equipment); (e) aero (development, production and maintenance of military aircraft, primarily for the Swedish Air Force, as well as production of components).

- (5) Scania is a Swedish company that, through its shareholdings in companies in the Scania group, is mainly active in the manufacture and sale of heavy trucks, buses, and marine and industrial engines. Scania also holds 50 % of Svenska Volkswagen AB, which imports, markets, and distributes passenger cars and light commercial vehicles in Sweden. Scania also owns the Swedish passenger car dealer Din Bil, which accounts for 40 % of Svenska Volkswagen's deliveries.
- (6) On 1 March 1999, Ford Motor Co. signed an agreement to acquire Volvo's automobile business, which accounted for about 52 % of Volvo's total 1997 turnover. Volvo's decision to sell the automobile division reflects Volvo's determination to concentrate on its trucks, buses and engines businesses. According to Volvo, the proposed acquisition is particularly important for Volvo's efforts to compete in large, emerging markets for heavy trucks and buses in Asia, central Europe, the former Soviet Republics, and in South America. As a result of the sale of its automobile business, Volvo's truck business represents 57 % of Volvo's turnover, the bus business approximately 13 % and the marine and industrial engines sector approximately 4 %. For Scania, trucks represent 60 % of its 1998 total sales revenues, buses 8 %, industrial and marine engines 1 %.
- (7) Volvo has explained that the rationale for the proposed concentration is to support Volvo's efforts to compete in large, emerging markets for heavy trucks and buses in Asia, central Europe, the former Soviet Republics, and in South America. According to Volvo, substantial investments will be required to take advantage of opportunities in these regions. Volvo's ability to expand in those emerging markets is stated to be a critical requirement if it is to operate efficiently and remain competitive with the world's leading truck and bus manufacturers, and, particularly, with DaimlerChrysler and the large North American engine producers.

II. THE OPERATION AND THE CONCENTRATION

- (8) The proposed concentration involves the acquisition by Volvo of a controlling stake in Scania. On 6 August 1999, Volvo reached an agreement to acquire all of

Investor AB's shares in Scania. Concurrently, the Volvo board of directors decided to make a public offer for all remaining shares in Scania.

- (9) The agreement between Volvo and Investor AB provides that the latter will receive payment solely in cash or a combination of cash and newly issued Volvo shares. Investor AB currently owns 54 061 380 series A shares and 1 508 693 series B shares in Scania. Investor AB will receive a cash payment of SEK 315 per share for 60 % of its holding. For the remaining 40 %, Investor AB will receive, at its discretion, either SEK 315 in cash per share or newly issued shares in Volvo in the proportion of six Volvo shares for each five Scania shares. If Investor AB chooses to receive solely a cash payment, it has stated its intention to acquire Volvo shares on the market for an amount corresponding to 40 % of the payment received. Currently, Volvo owns 25 290 660 series A shares and 60 993 759 series B shares in Scania. After the acquisition of Investor AB's shares in Scania, Volvo will own 79 352 040 series A shares and 62 502 452 series B shares in Scania, which corresponds to 77,8 % of the voting rights and 70,9 % of the share capital.
- (10) On the basis of the foregoing, the Commission concludes that the proposed acquisition, whereby Volvo would acquire sole control over Scania, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

- (11) Volvo and Scania had a combined aggregate worldwide turnover in excess of EUR 5 000 million in 1998 (Volvo, EUR 12,9 billion and Scania, EUR 5,1 billion). Each of them had a Community-wide turnover in excess of EUR 250 million in 1998 (Volvo, EUR 6,4 billion and Scania, EUR 3,1 billion), but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The operation constitutes a cooperation case with the EFTA Surveillance Authority under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

- (12) The proposed operation would affect two main areas: trucks (heavy trucks in particular) and buses (city buses, intercity buses and touring coaches). The investigation has confirmed that the proposed concentration would not lead to the creation or strengthening of a dominant position in the field of diesel engines (industrial and marine). Consequently, the markets for diesel engines will not be further discussed in this decision.

(i) TRUCKS

A. RELEVANT PRODUCT MARKET

- (13) The proposed concentration would create Europe's largest producer of heavy trucks (over 16 tonnes).
- (14) The notifying party relies on a previous Commission Decision (Case No IV/M.004 — Renault/Volvo) to identify three market segments according to the truck's gross vehicle weight: the light-duty segment (below 5 tonnes), the medium-duty segment (5 to 16 tonnes), and the heavy-duty segment (above 16 tonnes).

Heavy-duty trucks versus medium-duty and light-duty trucks

- (15) The market investigation carried out by the Commission in this respect broadly confirms the submission of the notifying party. Indeed, both competitors and customers have indicated that the distinction in paragraph 14 is correct and corresponds to the industry standard. In addition, a number of elements suggest that that distinction is appropriate.
- (16) The technical configuration of trucks of tonnage lower than 16 tonnes and trucks above 16 tonnes (the upper range) is very different as regards the key components such as the type of engine and the number of axles in particular. The technical aspects of the upper range are more sophisticated because the requirements of durability (length of life) and operating costs are greater than for the other ranges. Trucks above 16 tonnes are vehicles, which are used in transport of considerable weight. The type of transport can be regional or long distance.
- (17) In addition, the marketing of trucks is influenced by these technical differences which are of great importance for the buyer. Therefore, the technical boundary between the two products groups corresponds to a commercial distinction, which makes it possible to differentiate between two groups of customers. Upper range trucks are not normally considered by customers to be interchangeable with or substitutable for trucks belonging to the intermediate and lower range. The three categories of trucks thus constitute separate relevant product markets.
- (18) Furthermore, this distinction appears to reflect the fact that different production lines are used to produce trucks belonging to the different categories and that manufacturers can concentrate their production on one range with no presence or with a relatively weaker presence in another range. (For example, as far as Volvo and Scania are concerned, Volvo has a presence in the segment for trucks between 7 and 16 tonnes, while Scania has no production of trucks falling within this segment. Neither party produces trucks below 7 tonnes. Both parties are active in respect of trucks over 16 tonnes).

Heavy-duty trucks (above 16 tonnes)**Information provided by Volvo in the notification**

- (19) As the proposed transaction more specifically concerns the market segment of trucks above 16 tonnes, or heavy trucks, the present assessment will, in particular, focus on this segment of the market.
- (20) In the notification, Volvo indicated that there are generally two model categories for heavy trucks: long-haul and regional/local. However, Volvo indicates that chassis for trucks over 16 tonnes are essentially the same for all models. Differentiation only occurs in respect of the cab and the body or configuration for specific applications (for example, cement-mixing, city delivery, long haul transport).
- (21) In addition to these categories, Volvo notes that in Sweden and in Finland, longer trucks (25,25 metres) with higher maximum load capacities (60 tonnes) are commonly used. This special type of truck is not normally allowed in other Member States.
- (22) The notifying party claims that any major truck manufacturer would be in a position to easily modify one of its standard models for a specific application (as, for example, the longer trucks used in Sweden and Finland).
- (23) On the basis of the foregoing, Volvo therefore concludes that trucks above 16 tonnes belong to the same relevant product market.

The results of the market investigation

- (24) The extensive market investigation carried out in this case has shown that the reality, from the customer's point of view, is quite complex. In particular, the market investigation has revealed that, from the customer's point of view, there are a number of criteria, which are relevant for the choice of a given type of heavy truck over another.
- (25) A main distinction in the overall category of 'heavy-duty trucks' can be drawn between 'rigid trucks' on the one hand and 'tractor heavy trucks' on the other. Rigid trucks are integrated trucks, in the sense that they constitute a single body, from which no semi-trailer can be detached. 'Tractor heavy trucks', on the other hand, are 'detachable', in the sense that a semi-trailer is added to the top back of the cabin. On the basis of their transportation needs and personal preferences, the customers will choose a tractor or a rigid truck. As a matter of fact, the geographic location of the customer will strongly influence its choice for a tractor type or a rigid type of truck. As will be indicated in recital 52, customers in the

northern part of Europe typically purchase rigid heavy trucks. There are some indications that from the point of view of demand, rigids and tractors may not be fully substitutable. However, this question can be left open, as it does not materially affect the assessment of the notified concentration.

- (26) Besides this basic distinction, the market investigation has revealed that there are three main criteria according to which customers will choose to purchase a certain heavy truck (applicable to both rigids and tractors). The first criterion relates to the engine, and in particular, to its power (hp). The power of the engine is important in view of the weight to be transported and the topography in the geographic area of intended use. The second criterion is the number of axles of which the truck is composed: according to the investigation, there is a standard combination of axles (4 × 2), which is the most common combination in Europe. Other combinations, consisting of a higher number of axles (as for example 6 × 2 and 6 × 4) are more customised to meet specific customer preferences, which are, in turn, at least partially linked to topography and weather considerations. The third criterion relates to the cabin of the truck, which can be low, high or very high depending on the level of comfort required.
- (27) A rather substantial number of options can and will then be chosen by the customer in relation to its specific needs and the type of transport it is involved in. However, in general, all heavy truck manufacturers will be able to offer a truck including any of the key elements which are decisive from the customer's point of view, as well as from the manufacturer's point of view (for example, when deciding whether to offer a price for a truck comparable to that offered by a competing manufacturer).
- (28) Furthermore, in view of specific customers' requirements and the specific national regulations applicable, the customer will be in a position, in Sweden and in Finland, to purchase longer trucks (25,25 metres) with higher maximum load capacities (60 tonnes).
- (29) From the point of view of supply, it would appear that any major European truck manufacturer is in a position to offer a complete range of different types of heavy trucks. To offer specific trucks for certain European areas would certainly represent a supplementary cost for such manufacturers. The cost would then have to be compared to the attractiveness of the market under consideration. However, with specific reference to the question of product market definition, it is considered that the costs related to switching from the production of one type of heavy truck to another would not, *per se*, be considered substantial. Therefore, it is considered that the different types of heavy trucks do not constitute separate product markets.

- (30) On the basis of the foregoing, it is therefore concluded that the category of heavy trucks (more than 16 tonnes) can be considered to be a single relevant product market, for the purposes of this assessment.

B. RELEVANT GEOGRAPHIC MARKET

- (31) In a previous case⁽⁵⁾ the Commission indicated that 'it is not necessary to determine whether or not the geographic market for trucks is a Community market or is still composed of several national markets', as the question was not essential for the purposes of that specific case. The investigation in this case has focused on northern Europe, in particular four Nordic countries, Denmark, Finland, Norway and Sweden, and Ireland. Since, even on a national market definition, the operation does not lead to a dominant position in other parts of the Community, it is still not necessary to determine the exact scope of the geographic market outside the Nordic countries and Ireland.
- (32) The investigation has, however, shown that for these five countries the relevant geographic markets for heavy trucks are still national in scope. The reasons for reaching this conclusion will be explained below; the starting point will be the arguments put forward by Volvo in the notification.

Arguments put forward by the notifying party

- (33) In the notification, Volvo relied on the Commission's findings in the Renault/Iveco case⁽⁶⁾. In that Decision, the Commission concluded that the relevant market for touring buses was the European Economic Area (EEA), basically because of the high levels of imports and exports. The Commission also recognised that purchasers of touring buses are private operators who are price sensitive and have little regard for considerations of brand loyalty to national manufacturers⁽⁷⁾.
- (34) In the notification, Volvo submitted that the analysis that applies to touring coaches is equally applicable to heavy trucks. In addition, the parties refer to the following elements, which they claim to be conclusive in the determination of the relevant geographic market:

⁽⁵⁾ See Case No IV/M.004 — Renault/Volvo, Decision of 7 November 1990.

⁽⁶⁾ See Case No IV/M.1202 — Renault/Iveco, Decision of 22 October 1998.

⁽⁷⁾ The relevance of this finding for the affected bus markets will be discussed in the section concerning buses and coaches.

- (a) price levels: according to Volvo, '... price differences between Member States are not substantial. In particular, with the exception of France, Member State price level variations for Volvo's heavy trucks, for example, are within a $\pm 10\%$ range' (see page 39 of the notification);
- (b) manufacturers are already active EEA-wide and imports within the EEA are increasing: according to Volvo, '... the seven largest heavy truck manufacturers (DaimlerChrysler, Volvo, Scania, MAN, RVI, Iveco and DAF-Paccar), which account for approximately 97 % of the European market, are present in almost all Member States and all make substantial export sales. For Volvo and Scania, sales outside Sweden accounted for 90 % and 80 % of their total turnover in 1998 respectively. Imports represented about 30 % of sales of heavy trucks in the Nordic countries. While some manufacturers continue to maintain relatively large market shares in their home countries, this is largely an historical phenomenon. Imports are continuing to increase' (see pages 39 and 40 of the notification);
- (c) the emergence of large, private, trans-border purchasers: according to Volvo, deregulation in the truck industry has led to a 'significant change in customer profile and purchasing habits. In particular, it has resulted in the emergence of large, multinational fleet operators such as GPE Lyonnaise and Geodis/B Montreuil in France and the Netherlands with fleets that number between 5 000 and 10 000 trucks. Whereas in the past, most of Volvo's customers were small or medium-sized fleet owners, the majority of Volvo's customers are now large owners having fleets of at least 20 to 25 trucks. These large operators are present in several Member States and many of them either use competitive bids or tenders to purchase trucks from a central location or take advantage of their knowledge of prices and competitive conditions in other Member States when negotiating with distributors' (see page 46 of the notification);
- (d) emergence of dual-sourcing: Volvo argues that the trend towards large and multinational customers has also contributed to increasing dual (or multiple) sourcing. 'To ensure independence from any single manufacturer when negotiating purchases, fleet owners with more than 20 to 25 trucks typically carry at least two different makes in their fleets' (see page 47 of the notification);
- (e) product standardisation: according to Volvo, 'while in the past, weight and length restrictions presented barriers to the development of EC-wide truck models, the process of harmonisation that began in 1985 with Council Directive 85/3/EEC and most recently included Council Directive 96/53/EC has led to a situation whereby the same basic truck in terms of weight and dimensions can be sold and used throughout Europe' (see page 47 of the notification);
- (f) absence of entry barriers for non-domestic producers: according to Volvo, 'while in the past the need to establish dealer and aftersales networks may have been considered a barrier to entry, it no longer prevents non-domestic truck manufacturers from competing in a given Member State' (see page 48 of the notification).
- (35) In its reply to the Commission's Statement of Objections pursuant to Article 18 of the Merger Regulation (hereinafter: 'the reply'), Volvo submits that the Commission should not base its assessment of the relevant geographic market on non-price factors which were set out in Volvo's notification, as these are not relevant to the definition of the relevant geographic market. Instead, Volvo submits that the decisive factor for defining the relevant geographic market is whether suppliers actually price discriminate across markets. Volvo has submitted two reports (the Lexecon and Neven reports), which, in its view, show that prices for comparable heavy trucks are within a 5 % to 15 % band throughout the Community, with the exception of Sweden, and that there are therefore no significant price differences between the other Member States.
- (36) In its reply, Volvo also submits some new evidence relating to parallel trade in heavy trucks and factors related to the deregulation of the downstream transport industry which, in Volvo's view, provide further support for its contention of an EEA (minus Sweden) market for heavy trucks. All of these arguments will be assessed below.

The Commission's assessment of the relevant geographic market

- (37) In its reply, Volvo submits a number of new arguments in support of its contention as to the scope of the relevant geographic market. Although the reply seems to indicate that the company no longer considers the non-price factors indicated in its notification to be useful for the definition of the geographic market, these factors are nonetheless assessed, as they constitute useful elements in the overall market definition assessment. The main change of approach is that Volvo now believes that the primary focus of the assessment should be on suppliers' ability to price discriminate across markets.

Contrary to the assertion in the reply, the evidence available to the Commission shows that Volvo and the other suppliers of heavy trucks have applied significantly different prices and margins for comparable products in different Member States. This, as well as the relevant non-price evidence, which shows that conditions of competition in the heavy truck market differ from one Member State to the other, is considered in the following paragraphs.

Price levels differ significantly across Member States

- (38) Purchasing of heavy trucks is still largely done on a national level, for a number of reasons. This is reflected by the fact that significant price variations can be observed even between neighbouring countries. As indicated above, Volvo has argued both in its notification and in its reply that price differences between Member States are not substantial and concludes that there exists an EEA market for heavy trucks.
- (39) In the notification, Volvo considered that the insignificance of price differences was shown by information (on page 122) according to which, with the exception of France, Member State price level variations for Volvo's heavy trucks would be within a $\pm 10\%$ range. This information (relating to [a commonly sold Volvo model] (*)), however, showed the existence of national price variations as high as 20%. According to the notification, Volvo's price for that model is approximately [10% to 20%] higher in Finland than in Denmark, approximately [10% to 20%] higher in Sweden than in France, [0% to 10%] higher in Germany than in the Netherlands, [0% to 10%] higher in Germany than in Denmark and [0% to 10%] higher in the United Kingdom than in France. If the comparison is made with reference to (the [a more commonly sold model in the Nordic countries]), Volvo's price is approximately [10% to 20%] lower in Denmark than in Sweden, [10% to 20%] lower in Denmark than in Germany and [20% to 30%] lower in Denmark than in Finland. The notification did not provide price indications for Norway and Ireland. In the course of the proceedings the Commission also collected list prices for the most commonly sold models of heavy trucks for each manufacturer in each Member State. These data largely confirm the price variations indicated above. Furthermore, they show that Volvo's prices are significantly lower in Ireland than in the neighbouring United Kingdom. The indicated prices in 1998 for the most commonly sold rigid and tractor trucks (...) were thus more than 40% higher in the United Kingdom than in Ireland. Whilst transaction prices may differ from list prices, such differences do not support Volvo's contention that these markets are not national. The mere fact that price lists differ significantly from country to country is indeed an indication that the conditions of competition differ and will have the effect of making price comparisons more difficult for purchasers of heavy trucks. In general, pricing figures provided by

competitors confirm that there are substantial national price differences going in the same direction as those indicated for Volvo. For example, none of the competitors indicate a higher price in Denmark than in Germany. On the contrary, it appears that the indicated prices are normally at least 5% to 10% higher in Germany. This is consistent with a table contained in Volvo's notification, which was prepared for internal purposes prior to the transaction and gives actual dealer net prices adjusted for specifications. The indicated average price is 8% lower in Denmark than in Germany.

- (40) Volvo has argued that a price comparison based on the figures provided in the notification is not meaningful for the definition of geographical markets in this case. The reason for this is that the indicated price differences are, in Volvo's view, due to variations in the equipment supplied with the heavy truck and/or the customer structure (and therefore the purchasing power) in different countries. In its reply Volvo therefore stated that price discrimination should be defined as earning different margins on the sale of the same goods to different consumers.
- (41) In its reply, Volvo submits, in support of its arguments, reports by Lexecon and Neven, which suggest that with the exception of Sweden, price divergences between Member States are limited. The methodology used in these studies is to compare the sales of two of Volvo's heavy truck models (the [a commonly sold model] tractor and the [a commonly sold model] rigid) across 12 EU countries and Norway⁽⁸⁾. The starting point for the comparison was the average net prices charged to dealers in each country. In the reports, these average net prices are then adjusted for specification. Following these adjustments, the reports conclude that Volvo's prices for the tractor model fall within a $\pm 5\%$ band in all countries, except Sweden ([+ 0% to 10%]), France ([- 0% to 10%]) and Norway ([- 0% to 10%]). For the rigid model, the reports conclude that the adjusted prices fall within a $\pm 6\%$ band in all countries, except Sweden ([+ 10% to 20%]) and Denmark ([- 0% to 20%]). The reports furthermore attempt to adjust for customer mix which, it is claimed, would lead to a further reduction in the spread in the order of 2% to 4,2%.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.

(8) In the studies, Greece was omitted owing to the low number of vehicles sold, Luxembourg is included in Belgium and Ireland is included in the United Kingdom.

- (42) On closer examination, the Commission cannot agree that the Lexecon and Neven reports constitute a reliable source of evidence to support the existence of an EEA-wide market for heavy trucks. The reports rely on average net prices charged to dealers. Volvo has throughout the investigation questioned the validity of using this type of data. Furthermore, the adjustments use data from one year only (1998). It is therefore questionable how much weight can be given to the proposed conclusions of these reports, especially when several other factors point to national market definitions.
- (43) The Commission has examined the data used in the reports and some data, which were not used in the reports. Based on these data provided by Volvo the Commission has made its own calculations for some of the truck types that are not analysed in the Lexecon and Neven reports. Instead of taking averages over different engine types, as is done in the reports, the Commission made direct comparisons between the prices for the exact same engine type in various countries while using the methodology of the reports for correcting for differences in specifications. These comparisons are given below for the [a commonly sold model], which, of the models for which data are provided, is the most frequently sold engine in several countries (Belgium, Finland, France, the Netherlands, Portugal, Sweden and the United Kingdom). The (adjusted) price is then [10 % to 20 %] higher in the United Kingdom than in France and [10 % to 20 %] higher in Belgium than in France. The (adjusted) price in Sweden is [10 % to 20 %] higher than in Denmark, [10 % to 20 %] higher than in Norway and [0 % to 10 %] higher than in Finland. The (adjusted) price in Finland is [10 % to 20 %] higher than in Norway and [0 % to 10 %] higher than in Denmark. These large differences in adjusted prices — using the methodology suggested by the reports — clearly do not support the finding of an EEA-wide geographic market or a regional geographic market in the Nordic region.
- (44) The Commission has furthermore examined the corrections for customer mix made in the reports. It notes that the calculations are based on very limited data, particularly outside France, and that some of the countries where Volvo claims that large fleets are present but prices are still relatively high (for instance, the Netherlands) are not included in the calculation. This could bias the results towards finding a narrower spread. The reports also seem to favour the hypothesis that fleet discounts are particularly high in France. This is contradicted by a report from [a reputable market research company] to Volvo dated January 1999 which stated that 'analysis on samples in the United Kingdom shows that the average price for a specific truck type is down [10 % to 20 %] for large customers (fleets owning more than 30 trucks) compared to small fleets (less than five trucks). The corresponding figures for new truck sales for Germany and France are [10 % to 20 %] and [10 % to 20 %] lower'. The Commission is therefore of the view that the correction for customer mix applied in the reports has several shortcomings. Furthermore, it would in any case only offer insights for a limited number of countries. For instance, Norway, Ireland and the United Kingdom are not included.
- (45) As to the conclusions of the Lexecon and Neven reports, the Commission cannot accept that the existence of price differences within a $\pm 5\%$ (or $\pm 6\%$) band⁽⁹⁾ should be disregarded for the purposes of market definition, as this would suggest that a hypothetical monopolist in one area could impose a price increase in some cases as large as 10 % (or 12 %) without being restricted from doing so by conditions of competition in neighbouring areas.
- (46) Secondly, and even more importantly, the proposed conclusion of these reports is incompatible with other available sources of information. This includes not only the price comparison submitted by Volvo in the notification, but also the pricing information subsequently submitted during the Commission's investigation (which includes national price lists and transaction prices for the same truck model) and show that price variations are as important as those contained in the notification), and pricing comparisons contained in internal Volvo documents provided at the Commission's request (for example a table called 'transaction price comparisons, Q1 1999', which indicates prices for one to three truck deals regarding specific truck models, for Volvo, Scania and DaimlerChrysler). It is clear from Volvo's internal data that the price comparison was made taking detailed specifications into account. For Volvo, this table included the [a commonly sold model] tractor, and it shows that this model was sold at a price, which was [...] higher in the United Kingdom than in France. The largest price difference indicated for this Volvo model is a [20 % to 30 %] higher price in Belgium than in France. The table shows that the selected, comparable Scania and DaimlerChrysler trucks follow the same price pattern in the countries indicated as the Volvo model. Consequently, both of the latter
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- ⁽⁹⁾ It should also be recalled that the reports, for the purposes of narrowing the difference between the adjusted prices, had to exclude Sweden, France and Norway for tractors, and Sweden and Denmark from rigidids.

types of evidence indicate national price differences of the same order as those indicated in the notification. Therefore, in order to accept the findings of the Lexecon and Neven reports it would be necessary not only to overlook the shortcomings identified above but also to conclude that both the price comparisons provided by Volvo to the Commission and the price comparisons used internally by Volvo are equally flawed.

(47) Volvo suggests, in its reply, that the definition of relevant geographic markets should be based on whether there is price discrimination, defined as the heavy truck producers earning different margins on the sale of the same goods to consumers in different countries. It is therefore interesting to note that the figures on margin developments submitted by Volvo in the course of the proceedings clearly indicate that such price discrimination has taken place⁽¹⁰⁾. As examples, Volvo's net profit margin in 1998 for its [a commonly sold model] rigid was [10 % to 20 %] in Sweden versus (0 % to 10 %) in Denmark (measured at the level of gross profit margin it was [20 % to 30 %] in Sweden and [10 % to 20 %] in Denmark). For the [a commonly sold model] rigid the margin was [10 % to 20 %] in Finland versus [- 0 % to 10 %] in Norway (measured at the level of gross profit margin it was [20 % to 30 %] in Finland and [10 % to 20 %] in Norway). The information provided by Volvo also indicates similar differences in the margins between other countries, such as between Denmark, Ireland and Belgium for the [a commonly sold model] tractor.

(48) In conclusion, Volvo suggests in its reply that the main question for the definition of the relevant geographic market should be whether price or margin discrimination is possible between different areas. Volvo has provided numerous examples indicating that it has indeed been able not only to uphold substantial price differences between neighbouring countries, but also to apply significantly different margins⁽¹¹⁾. It therefore must be concluded that the available evidence on prices and margins is incompatible with Volvo's contention that the Nordic countries (Sweden, Denmark, Finland and Norway), the United Kingdom and Ireland should not each be regarded as separate geographic markets.

(49) Indeed, if the markets were wider than national, it would be reasonable to assume that buyers of heavy trucks would take advantage of the existing price differences and buy their vehicles in a neighbouring country and/or that arbitrageurs would take advantage of the opportunities created by these differences and buy vehicles from Volvo in the countries where its margins are the lowest and sell them to customers in the countries where the margins are high. Some of the reasons for the absence of such customer behaviour and arbitrage will be indicated in the following paragraphs. This will be done in the context of the non-price evidence that was included in the notification, despite Volvo's statement in its reply that this material is not useful for the definition of relevant markets.

Customer preferences

(50) It is clear from the market investigation that, although truck manufacturers are in a position to supply a range of different models of heavy trucks (although the adaptation for specific regulations existing in certain Member States does certainly represent a supplementary cost constituting a disincentive to penetrate certain markets), customer requirements are such that the models and technical configurations of heavy trucks sold in different Member States present considerable variations.

(51) This conclusion is substantiated having regard to the most commonly sold truck models of major truck manufacturers in different Member States. While it is observed that major differences may exist even in the basic characteristics of the heavy trucks sold in the different Member States (even when the models of the same manufacturer are compared), these differences are significantly less marked if one compares the most commonly sold models for the different truck manufacturers within a single Member State.

⁽¹⁰⁾ The information provided by Volvo indicates the margins for the three most popular models in a number of countries. However, as the most popular model varies between countries and since Volvo has not provided this data for all countries, no complete comparison can be made.

⁽¹¹⁾ It should be recalled that even the Lexecon and Neven reports, which went into considerable efforts to adjust the existing price data, despite omitting a number of countries where larger price differences were found, concluded that prices vary by 12 %.

(52) As a point of reference, the table below summarises the details of Volvo's three best selling models in each country along with the percentage of the total sales volume represented by these three models. The picture would be largely the same with regard to the other truck manufacturers.

| | Tractor/rigid | Engine (litres) | HP | Axles (wheels/traction) | Cabin comfort level | % of total sales |
|----------------|---------------|-----------------|---------|-------------------------|---------------------|------------------|
| Austria | T | 12-16 | 420-520 | 4×2 | 2-3 | [...(*)] |
| Belgium | T | 12 | 380-420 | 4×2 | 2-3 | [...] |
| Denmark | T | 12 | 380-420 | 4×2 | 2-3 | [...] |
| Finland | R | 12-16 | 420-520 | 6×2-6×4 | 1-2 | [...] |
| France | T | 12 | 380-420 | 4×2 | 1-2 | [...] |
| Germany | T | 12 | 380-420 | 4×2 | 2-3 | [...] |
| United Kingdom | T | 10-12 | 360-380 | 4×2-6×2 | 1 | [...] |
| Greece | T-R | 12-16 | 420-520 | 4×2-6×2 | 1-3 | [...] |
| Italy | T | 12 | 380-420 | 4×2 | 1-2 | [...] |
| Netherlands | T | 12 | 380-420 | 4×2 | 2-3 | [...] |
| Norway | R | 12 | 420-520 | 6×2 | 1-2 | [...] |
| Portugal | T | 12 | 380-420 | 4×2 | 1-2 | [...] |
| Spain | T | 12 | 380-420 | 4×2 | 1-3 | [...] |
| Sweden | T-R | 12 | 380-420 | 4×2-6×2 | 1-2 | [...] |

(*) [The national figures range from 19 % to 60 %, with an average of 43 %].

(53) As it can be seen from the table in recital 52, the types of basic characteristics, considered as key elements, of heavy duty trucks tend to change according to the Member State where the trucks are sold. Customers in Finland, Greece, Norway and Sweden have a stronger preference for rigid trucks than customers in other countries. At the same time customers in Austria, Finland, Greece and Norway require larger and more powerful engines, whereas customers in the United Kingdom tend to require smaller engines. There are similar differences in the preferences for the axle configuration. Finally, the cabin comfort level tends to be of lesser importance in Finland, France, the United Kingdom, Italy, Norway, Portugal and Sweden. Furthermore, with particular reference to the Nordic countries, it is evident that the basic specifications required vary substantially, not only if compared to those required in other Member States, but even among the Nordic

countries, with Danish customers preferring tractor-type vehicles, whereas customers in the other three countries generally prefer rigid trucks and have lower requirements for cabin comfort. Moreover, customers in Norway, and in particular Finland, appear to require engines with higher horsepower than those in Sweden and Denmark.

(54) In addition to the differences in the basic characteristics, it appears that customers' requirements may vary for a number of options, which can be applied to heavy truck models (for example, the gearbox and the number of cylinders in the engine).

(55) It appears that customers in three of the Nordic countries (Norway, Finland and Sweden) generally purchase heavy

trucks of the rigid type (integrated) having an engine of higher power than engines sold in other Member States and with a higher number of axles. These purchasing habits are linked to the topography and the climatic conditions prevailing in all these countries, as well as to the specific regulations applicable in terms of allowed tonnage. Given these conditions, truck operators will need to use trucks, which are actually able to provide the service required.

Technical requirements vary between Member States

(56) The market investigation has revealed that, despite a certain degree of harmonisation achieved at the European level (in particular Council Directive 85/3/EEC which harmonised weight requirements and dimensions for international traffic within the Union), there are still a number of technical requirements for heavy trucks which vary from country to country. This conclusion is particularly valid for the United Kingdom, Ireland and some of the Nordic countries. As far as the United Kingdom and Ireland are concerned, the fact that all vehicles must be adapted for right-hand drive severely restricts the possibility of importing vehicles intended for continental Europe. Furthermore, the Commission's attention has been drawn to the fact that the specification of the vehicles of the same model would be different in Ireland from that in the United Kingdom. Indeed, Scania, Volvo and Iveco all operate a heavier specification (in terms of running gear, driveline, suspension, tyres and springs) on the Irish market owing to the adverse road conditions in this country. For some of the Nordic countries, it is noted that whole vehicle type approval (i.e. complete harmonisation of technical regulations) in the heavy truck sector is not expected to take place within the next two to three years. Different regulations still apply for example in Sweden and Finland as concerns permitted total transported tonnage and maximum length of the trucks. Higher tonnage and longer trucks are allowed in these two countries (60 tonnes and 25,25 metres) than in the rest of Europe. This gives, in general, Volvo and Scania an advantage since their trucks are traditionally produced to meet the requirements (e.g. engine and axle configuration) of longer and heavier vehicles.

(57) In Sweden, there is also a specific regulatory barrier to entry. Under Swedish law, a specific homologation known as the 'cab crash test' is required. A competitor described the effect of this test to the Commission in the following way. 'A technical barrier to enter the Swedish market is, already mentioned, the Swedish cab test. This has amongst others effectively stopped (name of competitor) from selling its top of the range (name of models) and important models in its light line range. These models are homologated for sale in Europe and

are in fact sold elsewhere in high quantities. The costs of passing the test outweighs the revenues that would be derived from the additional sales through the current network'. At the oral hearing, Volvo admitted that the cab crash test constitutes a barrier to entry for non-Swedish producers of heavy trucks. Volvo estimated that DaimlerChrysler in Germany ask an additional DM 7 850 from customers who want a Swedish safety cab.

Purchasing is done on a national basis

(58) In view of the above described specificity of the truck market relating to customer preferences, technical requirements and price differences, and the need for dealer support, it is not surprising that the market investigation has shown that purchasers of heavy trucks very rarely turn to dealers established outside their country of operation. Even when the purchaser is a 'fleet customer' with international transport activity and operations located in various countries, it appears from the market investigation that trucks are bought nationally and buying decisions are taken on the basis of dealer support and pricing in that particular country. This is *a fortiori* true when the customer is a small to medium-sized transport company. As a matter of fact, the majority of heavy truck purchasers in the Nordic countries are small and medium-sized companies who buy nationally and do not consider taking advantage of price differences in view of the need for after sales and service support, the risk of a reduced secondhand value of privately imported trucks and the different types of technical characteristics prevailing in other Member States.

(59) Furthermore, it has been brought to the Commission's attention that dealers see the sale of a new truck as a source of future income from service and spare parts sales, on which the dealer typically has significantly higher margins than on the sale of the new truck. Data submitted by Volvo confirm that the major part of a dealer's revenue comes from service and the sale of spare parts. Therefore, a dealer who knows that the sale of a truck to a specific customer will not generate after sale income will be less inclined to offer an attractive price to this customer. Hence, customers trying to import trucks privately from other Member States (for instance, Danish truck customers wishing to buy in Germany) may well find that they will have to pay higher prices than locally based customers. It has also been brought to the Commission's attention that the various problems (service, guarantees, etc.) involved in importing privately from a neighbouring country would mean that a price difference of up to 10 % would be necessary before buying trucks in that neighbouring country would become profitable, and even then only for customers buying a certain number of trucks.

- (60) Another issue that influences whether a truck customer finds it attractive to import trucks privately or buy from a parallel importer is the possibility of being partly or fully reimbursed for problems with a truck after the warranty period has expired. The decision to give such a reimbursement is, however, typically made by the importer which of course would have little incentive to give such a reimbursement for a truck not imported via the official importer.

Distribution and service network

- (61) The market investigation has revealed another point, which needs to be taken into account when determining the geographic dimension of the relevant market. Although some market operators refer to the heavy truck market as a 'European market', they invariably indicate that a key factor in the decision relating to the purchase of trucks is the after sales network (maintenance, ordinary and extraordinary, as well as supply of spare parts) which can be offered by a given truck manufacturer. Replies from truck customers invariably indicate that an effective and well spread after sales and maintenance service is essential for a truck operator. As a matter of fact, the market investigation has made clear that the decision of a truck operator to purchase a certain type of truck will depend on a number of variables, each being essential for the purchasing decision: the most important elements are price, after sales services, secondhand value and warranty conditions (all these elements being reflected in a brand name, as it will be seen later). It therefore follows that the choice of a truck operator relating to the purchase of a certain brand of truck will heavily depend on the possibility for this specific truck manufacturer to offer effective after sales assistance. This connection between the desirability of a heavy truck supplier and its available after sales service network could explain why most customers (despite being in Volvo's terms 'professional buyers') do not take advantage of the existing price differences. For the same reason, it is likely that arbitrageurs would find it difficult to convince truck customers in a certain country to buy parallel imported vehicles⁽¹²⁾. It should be noted that, although warranties offered by manufacturers typically are valid throughout Europe, these cover only manufacturing defects. Normal

maintenance and servicing of the vehicle is not covered by the warranty but will typically be done locally, often on the basis of a service contract with the dealer which sold the vehicle.

- (62) As will be further indicated in the assessment, especially in all Nordic countries, the situation is such that the other European truck companies have significantly smaller and less well spread after sales networks, and that the existing alternative networks primarily are intended to cater partly for the needs of international heavy truck companies (requiring emergency repair service across Europe), and partly to the servicing of cars and vans. The market investigation has indicated that an adaptation of the competitors' networks to the level of those of Volvo and Scania, in order to meet the requirements of customers with widespread operations in the Nordic countries, would require substantial investments (which, of course, would have to be compared to the economic attractiveness of the market).
- (63) In the course of the market investigation, competitors have indicated that the decision relating to the establishment or the development of a service network is linked to a 'critical mass' of vehicles sold in any particular country. It has been suggested that this may be in the order of 10 %, depending on a number of factors linked to the costs and opportunities offered by the market in question. For the Nordic countries, with their relatively small market sizes and the additional costs relating to technical requirements, it has been stated that a market share of 10 % to 15 % would be the minimum necessary to justify the decision to incur these supplementary costs. It has also been brought to the Commission's attention that the relatively small size of the Nordic countries may not provide a sufficient incentive to penetrate the markets, even in the case of a price increase of 5 % to 10 %.
- (64) For the purposes of definition of the relevant geographic market it is sufficient to note that the importance of distribution and service networks is likely to be one of the main elements restricting customers from buying outside their country of establishment and also in limiting the ability of arbitrageurs to take advantage of existing price discrimination between Member States.

Market share variations

⁽¹²⁾ In its reply, Volvo refers to the existence of trade in secondhand heavy trucks as evidence that national markets are interrelated. In this context it should be noted, first that the buyer of a secondhand vehicle is typically not buying a package of a truck, a maintenance contract and possibly financing, as is the case for new trucks. Secondly, in its notification Volvo did not indicate that secondhand trucks were on the same market as new trucks (indeed, it provided no information about the sales of secondhand vehicles). Thirdly, Volvo has not provided information to show that parallel trade of new trucks is at the same level as trade in secondhand vehicles.

- (65) Furthermore, Volvo's contention as to an EEA-wide market for heavy trucks is not supported by the facts concerning its sales across that area, as indicated in the notification. It has been indicated that Volvo has a market share of 15,2 % in the EEA. However, its market share is significantly higher in a number of individual Member States (45 % in Sweden, 34 % in Finland, 29 % in Denmark, 38 % in Norway, between 22 % and 25 % in Ireland, Belgium, the Netherlands, Portugal and

Greece). At the same time, its market shares in a number of countries are significantly below this EEA average (12 % in Austria, 8 % in Germany, 13 % in Spain, 12 % in Italy and 11 % in Luxembourg). As indicated in the following table, similar national deviations from the average EEA market share can be observed for Scania and all other heavy truck manufacturers. Even between neighbouring Member States with somewhat similar

topography such as Denmark and Germany there are large variations in the market shares of the main manufacturers. Apart from vague references to historical reasons, Volvo has not provided any explanation as to how, in its view, such differences in market shares between Member States could be compatible with its contention that the heavy truck market is EEA-wide.

| | Volvo | Scania | Daimler | MAN | RVI | Iveco | DAF |
|----------------|-------|--------|---------|------|------|-------|------|
| EEA average | 15,2 | 15,6 | 20,5 | 12,6 | 11,9 | 10,6 | 10,5 |
| Sweden | 45 | 46 | 6 | 0 | 1 | 0 | 2 |
| Finland | 34 | 31 | 10 | 3 | 18 | 4 | 0 |
| Denmark | 29 | 30 | 18 | 10 | 3 | 7 | 4 |
| United Kingdom | 18 | 19 | 9 | 7 | 6 | 9 | 18 |
| Ireland | 22 | 27 | 9 | 6 | 3 | 8 | 13 |
| Germany | 8 | 9 | 42 | 26 | 2 | 6 | 5 |
| Austria | 12 | 16 | 18 | 34 | 4 | 6 | 9 |
| France | 14 | 9 | 16 | 5 | 38 | 8 | 8 |
| Belgium | 23 | 17 | 18 | 11 | 8 | 6 | 17 |
| Luxembourg | 11 | 15 | 28 | 14 | 10 | 8 | 15 |
| Netherlands | 16 | 23 | 12 | 9 | 3 | 3 | 33 |
| Italy | 12 | 12 | 16 | 6 | 9 | 41 | 4 |
| Spain | 13 | 16 | 19 | 8 | 19 | 20 | 9 |
| Portugal | 25 | 19 | 12 | 6 | 17 | 7 | 14 |
| Greece | 24 | 17 | 36 | 12 | 3 | 2 | 3 |
| Norway | 38 | 32 | 9 | 12 | 1 | 2 | 4 |

Source: Notification (based on official registration figures).

Conclusion on relevant geographic markets for heavy trucks

Sweden

- (66) The Commission considers that Sweden constitutes a separate relevant geographic market for heavy trucks. First, the market investigation has shown that purchasing of heavy trucks is done on a national basis and that the distribution and service networks constitute a barrier to import penetration to manufacturers who do not have a well-developed local network. This applies in particular to MAN and Iveco, which have no market share for heavy trucks in Sweden. The national purchasing pattern was confirmed by the investigation conducted by the Swedish competition authority showing that truck customers overwhelmingly tend to purchase heavy trucks on a national level, perhaps even locally. Secondly, as described above, prices in Sweden are different from those in its neighbouring countries. For instance, the (adjusted) price in Sweden for [a commonly sold model] is [10 % to 20 %] higher than in Denmark, [10 % to 20 %] higher than in Norway and [0 % to 10 %] higher than in Finland. Thirdly, Volvo's profit margins in Sweden are different from those in the other Nordic countries. For example, Volvo's net profit margin in 1998 for its [a commonly sold model] was [...] in Sweden versus [...] in Denmark, [...] in Finland and [...] in Norway. Fourthly, technical specifications are different in Sweden from the rest of Europe as higher tonnage and longer trucks are allowed in Sweden. Moreover, the Swedish cab crash test has been identified as a specific regulatory barrier to entry, which has meant that some truck models are not presently for sale in Sweden. Finally, RVI only has 1 % market share in Sweden while in neighbouring Finland the 'national' brand RVI/Sisu has 18 %. For the above reasons, the conditions of competition in the market for heavy trucks in Sweden are different from those of its neighbouring countries and Sweden thus constitute a separate relevant geographic market.

Denmark

- (67) The Commission considers that there are strong indications that Denmark constitutes a separate relevant geographic market for heavy trucks. First, the market investigation has shown that purchasing of heavy trucks is done on a national basis and that the distribution and service networks constitute a barrier to import penetration to manufacturers who do not have a well-developed local network. Secondly, as described above, prices in Denmark are different from those in its neighbouring countries. For instance, the (adjusted) price for the [a commonly sold model] is [10 % to 20 %] higher in Sweden than in Denmark. Furthermore, the dealer net prices adjusted for specifications for the [a commonly sold model], which are given in the notification, indicate an average price, which is [0 % to 10 %] lower in Denmark than in Germany. Thirdly,

Volvo's profit margins in Denmark are different from those in the other neighbouring countries. For example, Volvo's net profit margin in 1998 for its [a commonly sold model] was [...] in Denmark versus [...] in Sweden [...] in Finland and [...] in Norway. Fourthly, the three most sold Volvo heavy truck models in Denmark have different specifications from the preferred models in the other Nordic countries. Finally, the fact that Volvo has a market share of 29 % in Denmark but only 8 % in Germany, Scania 30 % in Denmark but only 9 % in Germany, DaimlerChrysler 42 % in Germany but only 18 % in Denmark, and MAN 26 % in Germany but only 10 % in Denmark tends to confirm that Denmark and Germany do not belong to the same relevant geographic market. The above reasons constitute strong indications that the conditions of competition in the market for heavy trucks in Denmark are different from those of its neighbouring countries and Denmark therefore constitutes a separate relevant geographic market. As shown below, if Denmark were to be considered as a separate geographical market the operation would lead to the creation of a dominant position on this market. However, given the fact that, as explained below, the notified transaction would in any event, be incompatible with the common market even if it would not create a dominant position on the Danish heavy truck market, this question does not have to be settled in the context of the present proceedings.

Norway

- (68) The Commission considers that Norway constitutes a separate relevant geographic market for heavy trucks. First, the market investigation has shown that purchasing of heavy trucks is done on a national basis and that the distribution and service networks constitute a barrier to import penetration to manufacturers who do not have a well-developed local network. Secondly, as described above, prices in Norway are different from those in its neighbouring countries. For instance, the (adjusted) price for the [a commonly sold model] is [10 % to 20 %] higher in Sweden than in Norway and [10 % to 20 %] higher in Finland than in Norway. Thirdly, Volvo's profit margins in Norway are different from those in the other Nordic countries. For example, Volvo's net profit margin in 1998 for its [a commonly sold model] was [...] in Norway versus [...] in Sweden, [...] in Denmark and [...] in Finland. Fourthly, the three most sold Volvo heavy truck models in Norway have different specifications from the most preferred models in Denmark. Finally,

(*) [Figure is highest in Sweden, followed by Finland, Denmark and Norway, in that order].

market shares differ between Norway and Sweden in that MAN has 12 % in Norway and none in Sweden, while Volvo and Scania have 38 % and 32 % respectively, in Norway, and 45 % and 46 % in Sweden. Furthermore, RVI only has 1 % market share in Norway while in Finland the 'national' brand RVI/Sisu has 18 %; in Denmark DaimlerChrysler has 18 % and only 9 % in Norway. For the above reasons, the conditions of competition in the market for heavy trucks in Norway are different from those of its neighbouring countries and Norway thus constitutes a separate relevant geographic market.

Finland

- (69) The Commission considers that Finland constitutes a separate relevant geographic market for heavy trucks. First, the market investigation has shown that purchasing of heavy trucks is done on a national basis and that the distribution and service networks constitute a barrier to import penetration to manufacturers who do not have a well-developed local network. Secondly, as described above, prices in Finland are different from those in its neighbouring countries. For example, the (adjusted) price for the [a commonly sold model] is [10 % to 20 %] higher in Finland than in Norway and [0 % to 10 %] higher in Sweden than in Finland. Thirdly, Volvo's profit margins in Finland are different from those in the other Nordic countries. For example, Volvo's net profit margin in 1998 for its [a commonly sold model] was [...] in Finland versus [...] in Sweden, [...] in Denmark and [...] in Norway. Fourthly, higher tonnage and longer trucks are allowed in Finland than in the rest of Europe except for Sweden. Finally, the 'national' brand RVI/Sisu has a market share of 18 % in Finland while it only has a share of 1 % in Sweden and Norway and 3 % in Denmark. For the above reasons, the conditions of competition in the market for heavy trucks in Finland are different from those of its neighbouring countries and Finland thus constitutes a separate relevant geographic market.

Ireland

- (70) The Commission considers that Ireland constitutes a separate relevant geographic market for heavy trucks. First, the market investigation has shown that purchasing of heavy trucks is done on a national basis and that the distribution and service networks constitute a barrier to import penetration to manufacturers who do not have a well-developed local network. Secondly, list price data provided by Volvo for the most sold rigid and tractor trucks are considerably lower ([40 % to 50 %]) in the United Kingdom than in Ireland. Thirdly, technical requirements in Ireland are different from other Member States. The right-hand drive severely restricts the possibility of imports of vehicles intended for continental Europe. Furthermore, the specification of the vehicles of the same model is heavier in Ireland than in the United Kingdom due to the adverse road conditions in Ireland.

Finally, the market shares of the main manufacturers in Ireland differ significantly from those in most of the rest of Europe. Although the difference to the United Kingdom is less pronounced, the combined market share of Volvo and Scania is 49 % in Ireland but only 37 % in the United Kingdom. For the above reasons, the conditions of competition in the market for heavy trucks in Ireland are different from those of its neighbouring countries and Ireland thus constitutes a separate relevant geographic market.

C. ASSESSMENT

- (71) Article 2 of the Merger Regulation requires an assessment of proposed concentrations with a view to establishing whether or not they are compatible with the common market. The key question in making this assessment is whether the proposed operation will lead to the creation or the strengthening of a dominant position. One of the key parameters involved in this assessment relates to the market position of the undertakings concerned and their economic and financial power. From an economic viewpoint the effects of a merger on market conditions may be measured in a number of different ways. Traditionally, the market power of merging parties has been measured by way of proxy, using criteria such as the market shares of the merging parties on the relevant markets and those of the remaining competitors. This analysis is normally supplemented with an assessment of the possible purchasing power of the customers, the likelihood of new entry, etc. The Commission has conducted this type of analysis in this case, and has come to the conclusion that the proposed concentration would be incompatible with the common market.
- (72) The Commission has also requested an econometric study from Professors Ivaldi and Verboven in order to attempt to measure directly what the effects of the merger could be on the prices charged by heavy truck producers in the various national markets. The results of such econometric studies can be a valuable supplement to the way the Commission has traditionally measured market power. This can, in particular, be the case when the customer base for a product is very fragmented so that reaching a satisfying segment of customers through survey-based methods is difficult. As there are many thousands of truck owners in each country, many having only one truck, a study was seen to be useful in this case.

- (73) The study is based on a 'nested logit model' where certain parameters relating to the pricing decisions of firms and to the buying decisions of customers are estimated from prices, market shares and other variables. In this case, the model was applied using data for two years for two types of truck for each of the seven major truck manufacturers in each of the Member States and Norway. The results from this estimation were then used to simulate the effects of the merger on the prices of both the combined entity ('New Volvo') and its competitors.
- (74) The results of the study point to serious competition problems, in particular in the Nordic countries and Ireland, where the present Decision finds that the merger will lead to the creation of a dominant position.
- (75) The Commission recognises that using this type of study is a relatively new development in European merger control. Furthermore, in its reply Volvo contested the validity of the study, claiming that the analysis was seriously flawed and that the results cannot be relied on. Although Professors Ivaldi and Verboven have provided answers to these criticisms, Volvo still contests some of the fundamental elements of the study. Given the novelty of the approach and the level of disagreement, the Commission will not base its assessment on the results of the study.

Current structure of the European heavy truck market

- (76) According to tables reporting European ranking for producers of heavy duty trucks in 1998 provided by Volvo in the notification, DaimlerChrysler is the European leader with 20,6 % of the EEA market, Scania ranks second with 15,6 %, Volvo third with 15,2 % and then four producers (MAN, DAF-Paccar, RVI and Iveco
- have EEA-level market shares between 10,4 % and 12,6 %⁽¹³⁾.
- (77) Therefore, before the implementation of the proposed operation, the European heavy truck market was characterised by the presence of seven producers. The strongest producers in Europe, also in view of their worldwide market presence, are respectively DaimlerChrysler, Volvo and Scania.
- (78) In addition, when having regard to the respective market position in the EEA of each of these manufacturers, it appears that it is only DaimlerChrysler, Volvo and Scania that have a significant presence throughout the whole of Europe. The other manufacturers tend to be more geographically specialised. Although even DaimlerChrysler, Volvo and Scania are stronger in their 'home' or 'natural' markets only these three companies are well represented throughout Europe. DaimlerChrysler's market share ranges between 6,2 % and 17,7 % in northern Europe (Nordic countries and Ireland), from 12 % to 42 % in the rest of Europe. Volvo's and Scania's profile is very similar, since their position is very strong in the whole of northern Europe (Nordic countries and Ireland) and rather equally distributed through the rest of Europe, with market shares ranging from 8 % to 9 % in Germany to 16 % to 23 % in the Netherlands.
- (79) The other European truck manufacturers have a relatively strong position in their 'home' or 'natural' market (RVI 38 % in France, Iveco 41 % in Italy, DAF-Paccar 33 % in the Netherlands and MAN 26 % in Germany and 34 % in Austria), but they are quite weak or virtually not present in some areas of Europe.
- (80) Furthermore, before the proposed transaction, Volvo and Scania appeared to be each other's closest competitors pursuing similar market strategies. Both Volvo and Scania are Swedish makes and are generally perceived as the expression of quality products, offering globally a reliable service. An examination of Volvo's and Scania's respective market shares clearly shows their essentially parallel positions throughout the whole of Europe (1998 figures).

| Market | Volvo | Scania |
|----------------|-------|--------|
| Sweden | 44,7 | 46,1 |
| Finland | 34,3 | 30,8 |
| Denmark | 28,7 | 30,2 |
| United Kingdom | 18,3 | 18,6 |

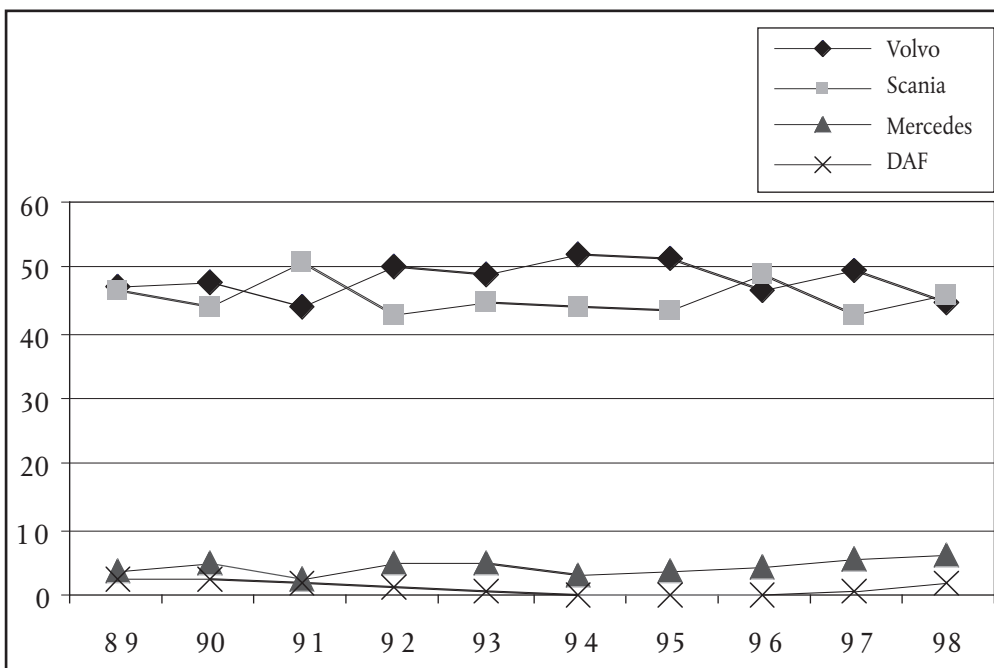
⁽¹³⁾ Volvo's market share figures are based on registration volumes for all heavy trucks. The data submitted largely correspond to the sales figures collected by the Commission in the course of the investigation (including those broken down between rigid and tractor heavy trucks).

| Market | Volvo | Scania |
|-------------|-------|--------|
| Ireland | 22,0 | 27,1 |
| Germany | 7,7 | 8,9 |
| Austria | 12,3 | 16,5 |
| France | 14,5 | 9,4 |
| Belgium | 23,4 | 17,4 |
| Luxembourg | 11,1 | 14,7 |
| Netherlands | 15,9 | 22,8 |
| Italy | 12,0 | 12,0 |
| Spain | 13,0 | 16,0 |
| Portugal | 25,1 | 19,1 |
| Greece | 24,1 | 16,6 |
| Norway | 38,0 | 32,2 |

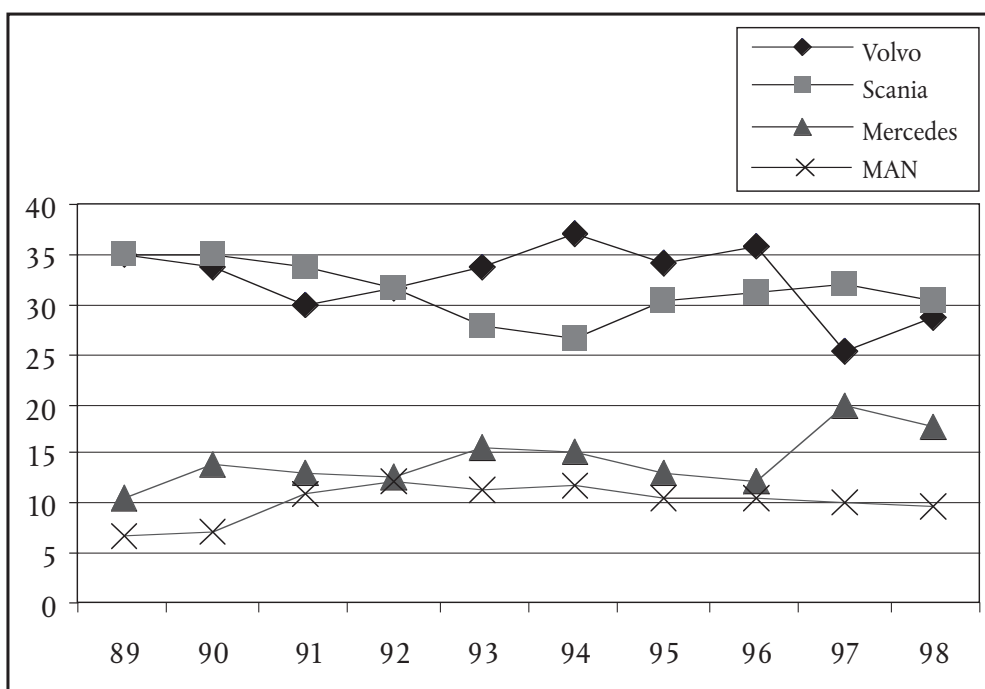
(81) These figures relate to 1998 only. However, even considering the existing variations in market shares that can be observed with respect to previous years, the overall impression is that there is, to a significant extent, symmetry between the market position of the two companies. This is consistent with the observations by third parties, that Scania has been Volvo's most direct competitor.

(82) In addition, when examining the situation in the Nordic countries, it is clear that over a long period of time (1989 to 1998) the average market position of Volvo and Scania has not only remained relatively stable, but that in addition most variations in the market share of one of the two companies (say, Volvo) correspond to a variation (in the opposite direction) of the other one (Scania).

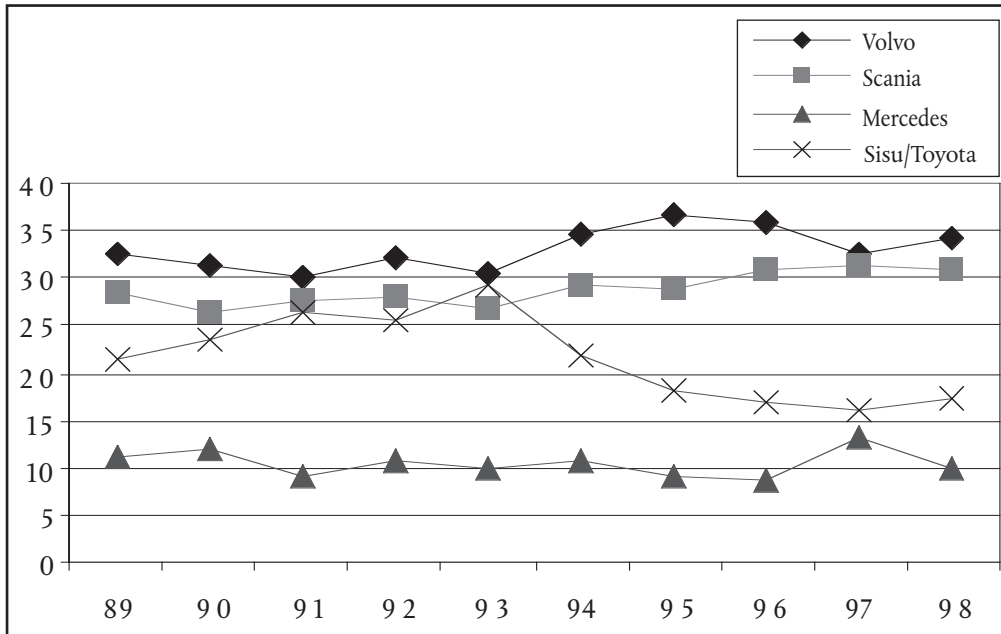
Sweden



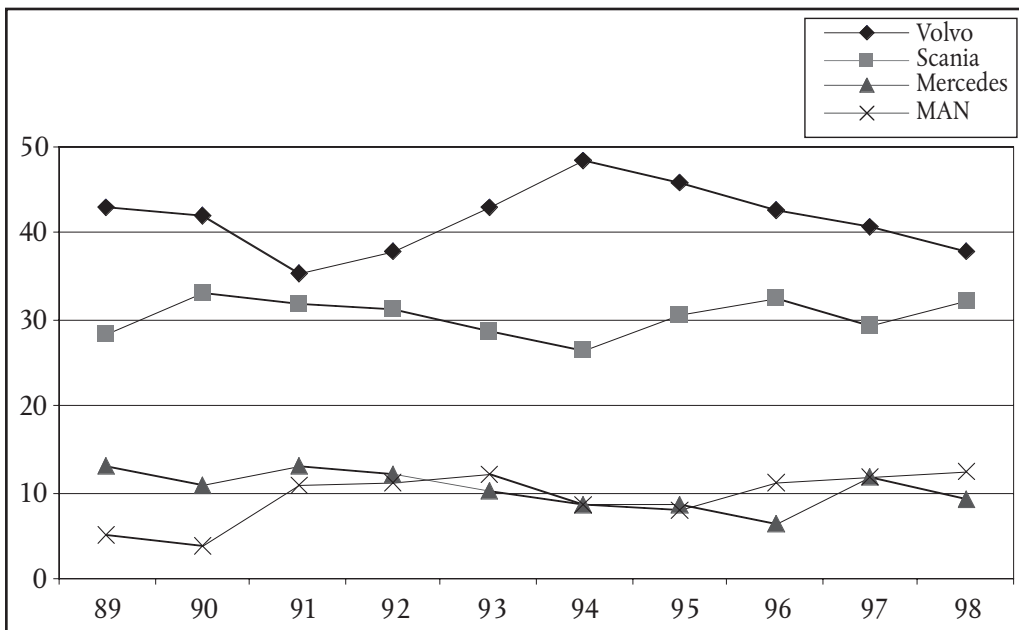
Denmark



Finland



Norway



These graphs show not only that Volvo and Scania have similar market positions, but are also indicative of the fact that they are each other's closest substitutes.

- (83) In addition to sales, the presence of a truck producer in a certain area can also be measured by the number of sales and service points that it has in that area. According to figures provided by Volvo, about [70 % to 80 %] of a heavy truck dealer's total turnover is from service and sales of spare parts, whereas the remaining [20 % to 30 %] is from sales of new vehicles. The table below indicates the total number of sales/service points in the relevant markets, as indicated by the main heavy truck suppliers. It should be noted that a dealer can have one or several sales points. The table below is intended to give an idea of the capillarity of each manufacturer's network, and consequently indicates the total number

of sales points. The table is indicative of the merged entity's advantage over competing suppliers in the relevant markets, in particular as all of the Volvo and Scania sales and service points are largely dedicated to heavy trucks, whereas several of the competitors' sales and service points are used for medium and light trucks, cars and vans and not for heavy trucks. Whilst some service points intended for servicing medium trucks may also be able to service heavy trucks, it should be noted that the investigation has indicated that medium trucks are largely used only in urban areas⁽¹⁴⁾. Competitors have, however, indicated that heavy trucks need service points throughout any given country and that purchasers of heavy trucks will not be persuaded to buy the trucks of competitors who only have a presence in the main cities. For the heavy truck market the table below therefore tends to overstate the extent and the quality of the networks of New Volvo's competitors.

| | Volvo | Scania | Volvo + Scania | Daimler | MAN | RVI | Iveco | DAF(*) |
|---------|--------|--------|----------------|---------|------|-------|-------|--------|
| Sweden | 71/116 | 67/105 | 138/221 | 34/38 | 0/9 | 4/20 | 13/34 | Na/60 |
| Finland | 22/31 | 23/34 | 45/65 | 37/37 | 0/25 | 16/45 | 3/26 | Na/2 |
| Denmark | 16/30 | 15/28 | 31/58 | 35/42 | 7/19 | 5/10 | 19/40 | Na/20 |
| Ireland | 5/5 | 8/8 | 13/13 | 8/8 | 0/0 | 1/1 | 7/7 | Na/11 |
| Norway | 42/65 | 45/50 | 87/115 | 24/24 | 6/23 | 13/13 | 16/23 | Na/33 |

(*) Figures supplied by Volvo.

Structure of the market at Member State level — current structure and effects of the proposed operation

- (84) In its reply, Volvo makes two general comments concerning the analysis of the competitive effects of the merger in individual Member States. First, it argues that customers do not display an undue level of concern about the proposed concentration. Secondly, it argues that price discrimination between large and small customers is not possible in the heavy truck markets. The Commission has considered these general remarks carefully and come to the conclusion that neither is conclusively supported by the available facts. Prior to analysing the results in the individual Member States, the reasons for this conclusion will be set out below.

Customer concerns

- (85) When assessing Volvo's argument that customers are not concerned, it is necessary to keep in mind that the truck industry has an extremely fragmented customer structure. To give an illustration, there are, according to Volvo's figures, more than 23 000 owners of heavy trucks in Sweden alone. Less than 5 % of these operate a fleet of more than 10 trucks. The situation is largely similar in other Member States (and also for the bus markets, in particular for tourist coaches).

⁽¹⁴⁾ It has been brought to the Commission's attention that the costs of extending the capability of a light/medium truck network to cover also heavy trucks are 50 % of the costs of an entirely new heavy truck network (see, for example, recital 141).

- (86) In a market with such a fragmented demand structure, it would be unreasonable to expect that the majority of such customers would be in a position to provide a sophisticated legal analysis of the proposed merger. This means that it is not possible, as Volvo suggests, to consider that customers who, for unknown reasons, have not participated actively in the proceedings are all unconcerned. Instead, the responsibility of the competition authority to look carefully at the effects of a merger in such a market is particularly strong.
- (87) Thus, the Commission cannot accept Volvo's view that the question of whether significant concerns exist in a certain market can be answered by reference to the responses from a limited sample, such as the 20 largest buyers in a country. This approach would certainly raise a question as to how representative the views of these buyers are of the effects of the merger on smaller customers. There is evidence from Volvo's own documentation that price discrimination takes place in these markets.
- (88) However, even on the basis of a limited sample, the Commission finds that there is strong cause for concern in the countries indicated below. In this context it must be stressed that the relevant question is not, as claimed by Volvo, the number of 'complaints' that have been submitted. Instead, a qualitative analysis must be made of the answers provided. In this context it is clear that a competition authority has strong grounds to be concerned when, as in this case, a not insignificant proportion of the largest customers indicates, *inter alia*, that the parties will become dominant, that Scania is the only alternative to Volvo, that other brands are unable to fulfil their technical requirements or have insufficient service networks, and that they would have to accept a price increase of 5 % to 10 %⁽¹⁵⁾. Even while admitting that a number of customers have not expressed concerns about the proposed concentration, the Commission is therefore unable to accept Volvo's argument that no concerns exist.
- (89) The same argument also applies to the 12 surveys conducted by GfK on behalf of Volvo for its reply (hereinafter referred to as 'the GfK surveys'). These surveys were conducted by telephone with a sample of 'large' customers in each of the four Nordic countries, the United Kingdom, Ireland, Belgium and Portugal. In each of the Nordic countries an additional survey was made for 'small' customers. The Commission cannot
- agree with Volvo's contention that the GfK surveys demonstrate the absence of concerns. The reasons for this are twofold. First, from a methodological viewpoint, there are a number of questions regarding the way in which the questions were formulated (for example, the respondents were not asked how they would react if both Volvo and Scania were to raise their prices after the merger). Such methodological question marks inevitably reduce the evidential value that can be attributed to the GfK survey.
- (90) Secondly, even assuming that the methodological question marks could be answered satisfactorily, it is difficult to follow Volvo's argument that the GfK surveys demonstrate that the proposed merger would not lead to competition concerns. One of the questions asked in the surveys was whether the respondent would switch supplier in response to a 5 % price increase by Volvo or Scania. While the indicated result of each survey shows that some respondents would switch (less than half of the respondents to each survey), it is unlikely that New Volvo would adopt a strategy to impose an across-the-board price increase. Indeed, information provided by Volvo shows that it applies a strategy of individual pricing for each transaction and that large price differences are applied to different customers. There is also strong evidence that Volvo is able to price discriminate between small and large customers. It is also worthy of note that the surveys show that the respondents' most common answer as to the company to which they would switch is actually Volvo and Scania. It therefore appears that, when stating their likelihood to switch in response to a 5 % price increase, respondents have been allowed to assume that their pre-merger ability to switch from Volvo to Scania (or vice versa) will be unchanged after the implementation of the proposed merger. It would therefore seem likely that the already low proportion of customers who indicated that they would switch in response to a 5 % price increase would have been even lower if they had been instructed to assume that their post-merger ability to switch from Volvo to Scania (or vice versa) will be decided by Volvo's marketing strategy for the two brands.

Price discrimination

- (91) In its reply, Volvo argues that it would be extremely difficult to engage in successful price discrimination in the heavy truck market and that the risks associated with losing sales to customers who are not prepared to pay a higher price would outweigh the potential gains from such behaviour. In addition, at the oral hearing, Volvo presented the results of an analysis of its sales to Swedish and Danish customers in 1998. After having made various adjustments for specification of the vehicle and

⁽¹⁵⁾ As explained above, the Commission does not consider it meaningful to provide statistics based on an unrepresentative sample. However, it is worth noting that, although the number of respondents expressing concerns varies from country to country, in all of them some made one or more of the comments indicated in recital 88.

fleet size the analysis concludes that the price differential is small, [0 % to 10 %] lower prices to large customers (defined as those buying at least 30 trucks) — and does not constitute significant price discrimination. It should, however, be noted that this analysis of Volvo's sales to Swedish and Danish customers in 1998 does not contain any reference to its margins on the sales to the different customer groups. As will be recalled from the section on relevant geographic markets, Volvo have submitted that price discrimination should be defined as earning different margins on the sale of the same product to different consumers.

(92) Furthermore, it should be noted that Volvo's contention as to the absence of price discrimination is in sharp contrast with its own internal documents supplied to the Commission in the course of the proceedings. At the Commission's request Volvo has submitted information indicating its prices, profits and margins on sales to small, medium and large buyers of the [a commonly sold model] truck with three different engine sizes⁽¹⁶⁾. For the most commonly sold engine size ([...]), this information shows that a small customer will pay a price that is [20 % to 30 %] higher than a large customer or [0 % to 10 %] higher than a medium-sized customer. Even more significantly, it is apparent that Volvo's profit margin on sales of this model to the small customer is [10 % to 20 %] whereas the profit margin on sales to large and medium-sized customers is [0 % to 10 %] and [10 % to 20 %] respectively. Thus, it follows that a relatively modest price difference such as the [0 % to 10 %] difference between a small and a medium-sized customer translates into a difference of [30 % to 40 %] in the profit margin achieved. At the same time the profit margin achieved from the small customer is [0 % to 10 %] times as high as that achieved from large customers (the margin on sales to medium-sized customers are more than [0 % to 10 %] times that achieved from large customers).

(93) In view of the foregoing, it must be concluded that this pre-existing internal Volvo document constitutes a strong indication that the company has actually been able to price discriminate between sales to different customer group, and that this evidence must take precedence over the abovementioned arguments developed for the purposes of the reply and the oral hearing

Assessment at Member State level

(94) The prominent market positions of Volvo and Scania in the Nordic countries and Ireland will now be assessed separately.

⁽¹⁶⁾ Volvo supplied this information relating to its sales in France, stating that it was not able to provide such a breakdown for other countries.

Sweden

Current structure of the market

Market shares

(95) The current structure of the Swedish market for heavy trucks is represented and summarised by the following table:

| Company | Market share in 1998 |
|-----------------|----------------------|
| Volvo | 44,7 % |
| Scania | 46,1 % |
| DaimlerChrysler | 6,2 % |
| MAN | — |
| RVI | 0,8 % |
| Iveco | 0,2 % |
| DAF-Paccar | 1,9 % |

(96) The table in recital 95 shows that currently Volvo and Scania are the only significant competitors in the Swedish market. Both Volvo and Scania have a market position, which is seven times higher than that of the next competitor, DaimlerChrysler. All other manufacturers are either not present in the Swedish market or have a totally insignificant presence.

(97) In addition, as it is further substantiated by the graphs shown in recital 82, Volvo and Scania are in direct competition with each other. That is shown by the fact that any market share variation of one of the two companies is closely correlated to an opposite market share variation of the other one.

Brand

(98) Both Volvo and Scania are Swedish high-value brands. The strength of the respective brands lies in their perception as high-quality products having effective and very well spread after sales networks. According to the supporting documentation submitted by Volvo, both parties present the second hand value of their vehicles as part of their brand image. All these elements make these two brands 'the brands' in the whole of the Nordic countries and Sweden in particular. The market investigation indicates that demand in the heavy truck

market is quite inelastic, in the sense that the purchase price is only one of the elements, which determine the choice of a certain type of heavy truck. The reason for this is that purchasers of heavy trucks typically have regard to the whole life cost of the vehicle, which means they will have regard to initial purchase price, financing, after sales network, warranties, and secondhand value (including 'trade-in' of used trucks). As is clearly demonstrated by the market shares, only Volvo and Scania have up to now been able to offer a sufficiently good package, including a good balance of all these elements.

(99) This is further confirmed by the fact that price information in the possession of the Commission shows that the parties' pricing for heavy trucks in Sweden is invariably higher, for comparable models, than pricing applied by other potential competitors. This is proof that a typical truck purchaser in Sweden will not have regard only to the initial price paid for the purchase of the heavy truck, but will consider a number of elements, namely the quality of the product, the after sales network and the secondhand value, which will offset the higher price paid for the initial purchase.

(100) In view of this, Volvo and Scania have over time built up loyalty in the whole of the Nordic countries, and in Sweden in particular, vis-à-vis their own respective brands. In this market, brand loyalty means that market participants consider that Volvo and Scania over a long period have provided high-quality products, good service to customers and high secondhand value and that this reputation makes customers inclined to continue to buy these brands. This loyalty is expressed at least at two levels: at the level of the final purchaser, the truck operator, and at the level of the dealer.

Brand loyalty: service network

(101) The market investigation has provided indications that in the heavy truck market a well-spread and effective after sales network is crucial for any truck manufacturer to penetrate a market. Both Volvo and Scania have an extensive dealer and after sales network in Sweden, most of which are exclusive. The strength of a network is represented by its density, by the technical capability of a given dealer/service point to serve the truck operator, and by the contacts existing between the dealer/service points and the truck operator. This last element translates itself, after a number of years, into relationships of trust between the dealer/service point and the truck operator. This relationship of trust is part of the reputation of the brand, and its accumulated value is significant (which is reflected in the fact that a substantial proportion of the price that Volvo has offered to pay for Scania relates to goodwill).

(102) The investigation has shown that dealers/service points in Sweden tend to be loyal to Volvo and Scania, and will therefore show resistance in changing supplier. Owing, in particular, to the large installed base of Volvo and Scania vehicles, these companies are in a position to ensure a better and more secure return on investment to the dealer/service point.

Brand loyalty: final customer

(103) The market investigation has also provided indications that final purchasers of heavy trucks tend to be loyal to the national brands, Volvo and Scania. This is the case essentially for the reasons mentioned above; these two manufacturers are in a position to offer customers the best package in terms of whole life cost. In addition, as far as northern Europe and the Nordic countries in particular are concerned, Volvo and Scania are perceived to be the best placed to provide a product that satisfies customers' specific transport needs. In this context, factors such as the suitability for climatic and road conditions and satisfying all technical requirements, including national legislation, have been mentioned. It should be underlined, and this factor will be further elaborated below, that the vast majority of Swedish truck purchasers are not, as claimed by Volvo, fleet customers with a large number of trucks, but rather operators with one or two trucks. This type of customer will typically be more sensitive to brand loyalty considerations than customers with a large number of trucks in their fleets.

(104) In the reply, Volvo disputes the conclusion that road and climatic conditions in the Nordic countries amount to a substantial barrier to entry. To support its view, Volvo refers to a specialised truck magazine in the United Kingdom that chose a MAN truck as the best vehicle (ahead of both Volvo and Scania) in a test of trucks of various manufacturers in arctic conditions. It is noticeable that this test was organised by Scandinavian magazines and that Volvo has not submitted the assessment made by the other magazines that participated in the test. Furthermore, it must be noted that customers' purchasing behaviour and preferences may be based on the perceived quality of a product.

Effects of the proposed operation on the Swedish heavy truck market

Market shares — market structure

(105) The proposed acquisition of Scania by Volvo would result in a New Volvo whose combined market share in Sweden would be equal to 90,8 % of the market, according to 1998 figures. The next competitor to the New Volvo would be DaimlerChrysler with a market share of 6,2 %. The other European truck manufacturers are virtually absent from the market (DAF-Paccar: 1,9 %, RVI: 0,8 %, Iveco: 0,2 %, MAN: no sales).

(106) Therefore, the proposed operation results in a significant overlap between the parties' activities. Moreover, the proposed concentration would significantly increase the gap between the market share held by New Volvo and that of its closest competitor in each of the Nordic countries, and in Sweden in particular. Prior to the concentration the closest remaining competitor in Sweden (DaimlerChrysler) had a market share that was about 7,5 times smaller than that of the market leader. Following the implementation of the concentration this competitor would have a market share 14,5 times smaller than that of the new entity.

(107) Furthermore, the information provided by Volvo (further corroborated by the graphs in recital 82) as well as the Commission's investigation, clearly supports a finding that, prior to the proposed concentration, Volvo and Scania have been each other's main competitors. As a result of the proposed concentration, this competition would be lost, and the advantage that New Volvo would hold over the remaining competitors would increase significantly.

(108) The situation is further aggravated by the fact that the very strong market position of each of the parties to the concentration is not a recent phenomenon or the result of strong market share variations. It is therefore not likely that other truck manufacturers will exercise a significant competitive pressure on the parties. Indeed, an evaluation of the respective market shares of the parties in Sweden, illustrated by the graphs in recital 82, shows that the respective market positions of Volvo and Scania have remained relatively stable over a very long period of time (10 years). Furthermore, the market investigation has corroborated this view.

Dealer and customer loyalty

(109) New Volvo will be in a position to act on a market, the heavy truck market in Sweden, where it will have the benefit of specific strengths. In the first place, it will benefit from a traditional dealer and customer loyalty. In the course of the market investigation, it has been explained that competitors of Volvo and Scania face significant difficulties in finding efficient and reliable dealers/service points in this area. This is essentially because dealers/service points are traditionally linked to their national suppliers, who can offer the highest volume of business and therefore a better return on the dealer's investment.

Customer structure

(110) Furthermore, given the customer structure of heavy truck purchasers in Sweden, the new entity will be in a position to profit from their loyalty and therefore be in a position to raise prices. In addition, Volvo's five major customers of heavy trucks in Sweden represent only [0 % to 10 %] of Volvo's total sales in that country. The situation is similar for Scania. The proportion of sales to

the five largest customers of the merged entity would be even lower.

(111) This is further corroborated by Volvo's own estimates (see page 5 of the submission dated 25 November 1999) concerning its sales of a specific model of heavy truck ([...]), which is a commonly sold model in Sweden. This information shows that [80 % to 90 %] of these trucks sold in Sweden are sold as single unit sales. Volvo has indicated that this is a useful proxy for fleet size.

(112) In addition, according to a table provided by Volvo in a fax of 13 December 1999, out of a total Swedish fleet population of more than 61 000 heavy trucks, [20 % to 30 %] are owned by a person or company owning just that one truck. Moreover, [40 % to 50 %] of the total Swedish heavy truck fleet are owned by persons or companies that have between 2 and 10 trucks in their fleet. This means that a large majority ([60 % to 70 %]) of the Swedish heavy truck population is owned by very small operators. According to the same source, out of a total of more than 23 000 Swedish heavy truck owners, only [10 % to 20 %] have fleets consisting of more than 100 trucks, and only [50 % to 60 %] have between 51 and 100 trucks.

Customer structure and dual-sourcing

(113) Volvo has argued that many of their truck customers in the Nordic countries (and elsewhere) are sophisticated professional buyers with a policy of dual-sourcing. According to Volvo, these customers currently pursue a policy of double-sourcing or multi-sourcing, in order not to be dependent on a single truck manufacturer.

(114) According to information provided by Volvo in the table mentioned in recital 12, there are [>30 000] trucks in mixed fleets in Sweden of which [>14 000] are Volvo trucks. This means that 50 % of all Swedish heavy trucks are in mixed fleets and that just under half of those are Volvos. It should, however, be noted that Volvo's definition of a mixed fleet includes any proportion of mix, for example a fleet of 50 Volvos and one Scania is a mixed fleet according to this definition. Moreover, it is doubtful whether, based on this definition, and considering that heavy trucks are durable goods, the prevalence of mixed fleets provides any significant insight into the future development of the market, or the reaction of customers with a policy of on-going dual-sourcing. On the other hand, there is a total of more than 23 000 owners of heavy trucks in Sweden. Only [<5 000], that is less than 18 % of them have a mixed fleet. This means that more than 80 % of all Swedish heavy truck owners do not have more than one brand in their fleet. Under these circumstances, the value of the arguments relating to dual-sourcing should not be overstated.

(115) In addition, the market investigation has revealed that, especially as concerns smaller truck operators, there is a strong economic interest in concentrating the fleet to one brand. This is due to the possibilities that this type of strategy can offer, in terms of reducing costs for maintenance and training of personnel (primarily, the drivers).

Customer structure and shrinkage effect

(116) In mergers with horizontal overlaps in industrial markets where there is some dual-sourcing, merging parties often present calculations of a certain loss of market share resulting from customers switching supplier. These calculations are motivated in part by the fact that the management wants to be cautious vis-à-vis its shareholders. The calculations are therefore often more like worst-case scenarios than actual predictions. The Commission therefore has to evaluate carefully the assumptions behind the calculations and the likelihood that the losses will actually materialise. Only if this evaluation results in a finding that a certain merger can be safely predicted to lead to market share losses that will significantly change the competitive situation, will these losses be taken into account in the competitive assessment. In this particular case Volvo has not, for the reasons set out below, been able to sufficiently substantiate its claims that the merged entity will suffer such losses of sales as to support changing the competitive situation in the relevant markets.

(117) According to Volvo, the proposed operation will inevitably result in a shrinkage effect, i.e. in current Volvo and Scania heavy truck customers switching to other makes. To support this view, Volvo has provided the Commission with the final results of a study carried out by JP Morgan on behalf of Volvo. According to these results, the proposed operation would result in a loss of customers corresponding, in percentage of market share, to [10 % to 20 %] in Sweden and Finland and [10 % to 20 %] in Denmark and Norway. As to this contention the following is noted.

(118) According to Volvo, the best source for evaluating the likelihood of a post-merger reduction in market shares should be the above-indicated financial reports prepared by stock market analysts for the purpose of assessing the proposed concentration. It may, however, be necessary to approach these reports with a certain degree of caution. First, it is obvious that these reports have not been produced to evaluate the proposed concentration's effects on competition. Instead, the aim of such reports is to evaluate the value of the shares in the companies involved, should the concentration be approved. The fact that analysts may be overly cautious or optimistic in their presentation, in order to fit the long or short-term recommendation they wish to make can therefore

not be excluded. Indeed, in a submission of 21 October 1999 Volvo stated that 'if the valuation of the acquisition was overly optimistic because total gains were exaggerated or losses underestimated, then Volvo could suffer serious negative consequences in the form of the capital markets selling Volvo shares and reducing the total capital value of the company'. Secondly, the way in which analysts present their recommendations do not have to follow any specific systematic approach, such as that imposed by the Merger Regulation, where each relevant market has to be assessed separately. Thirdly, Volvo has made known that the financial reports, to which it has referred, have been based only on information provided by Volvo itself.

(119) Volvo has indicated that a number of analysts other than JP Morgan have expressed their views on combined market share loss, and a number of them have confirmed the views of JP Morgan. It is however noted that these predictions were all made around the moment of the announcement of the operation and in any event before the date of notification to the Commission. It cannot be excluded that most of these early reports were based on the same material as that provided to JP Morgan by Volvo. Furthermore, the market share losses mentioned in these reports are often not estimates in the proper sense of the word, but rather scenarios used for quantifying the downside risk of the share price of New Volvo after the acquisition.

(120) In its reply Volvo relies on some of these estimates of market shares losses. Several of them are so high that they clearly cannot refer to what Volvo has described as a shrinkage effect. For instance, Volvo reports that Handelsbanken Markets has projected a long-term Volvo/Scania market share of 46 % in Sweden. This implies a market share loss of 45 %, equivalent to the entire market share addition. According to Volvo, both Den Danske Bank (8 August 1999) and Enskilda Securities (9 August 1999) estimate a long-term market share loss of 31,5 %. Again, this figure is so high that it clearly cannot refer to what Volvo calls the shrinkage effect.

(121) It is, however, useful to consider the two most recent predictions of possible shrinkage effects, made by two other analysts (Salomon Smith Barney, London, 4 October 1999, and Alfred Berg ABN Amro, 6 October 1999). The latter, in particular, is clearly made having considered the predictions of all the early reports. These later reports are much more conservative about the loss of market share than those expressed earlier by other analysts.

- (122) For example, Alfred Berg Research of ABN Amro, in its report of 6 October 1999, indicates: 'Short term, doubts on EU clearance of the Scania deal and synergies, could hold back the stock, but we are convinced that Volvo has a good chance of delivering on synergies and defending market share'. And: 'Based on our research and talking to customers, we believe that the overall market share risk in western Europe could be more limited than many seem to fear'. Alfred Berg's scenarios of market share loss in western Europe are of a global loss between 0 % and 3 %.
- (123) In view of these weaknesses, and in order to assess the likelihood of the proposed 'shrinkage-effect', the Commission has contacted a number of important customers to assess the impact that the proposed concentration is likely to have on their future purchasing decisions. In addition the Swedish competition authority has, on the Commission's behalf, made a similar enquiry with smaller customers in Sweden. It follows from these investigations that Volvo, which has consistently announced in its market communications that it intends to keep the Volvo and Scania organisations and brand separate, may have been relatively successful in this strategy. An important number of heavy truck customers have referred to the fact that the two units will remain separate, and that the proposed concentration will not necessarily have an important impact on their future purchasing decisions.
- (124) In order to evaluate the impact of Volvo's decision to keep brands and marketing organisations separate, the Alfred Berg report also provides comparisons with previous mergers in which a similar decision was taken. Two operations are considered: 1. Iveco-Pegaso; and 2. Freightliner-Ford (Sterling). It is appropriate to cite these past cases because Volvo also relies on the experience in the Freightliner case in order to assess the likelihood of loss of market share.
- Iveco-Pegaso*
- (125) When Iveco acquired Pegaso in 1990, the combined market share was 14 %, which had fallen to 10 % last year. According to the report, 'A key difference, we believe, (with the present operation) is the strength of those brands compared to Volvo and Scania. Merging two weak brands such as Pegaso and Iveco does not necessarily create a strong player'. This comparison therefore appears to be inappropriate.
- Freightliner-Ford (Sterling)*
- (126) The Alfred Berg report indicates: 'When Freightliner announced its acquisition of Ford's heavy truck operations in January 1997, Ford's market shares had been on a declining trend for many years. As the Ford name and products were dropped and the new Sterling products were not introduced until a year later, market shares fell, but have started to recover less than a year after the Sterling products reached the market. We believe this has a very limited comparability with Volvo/Scania, as the Volvo and Scania names are strong and no brands will be dropped'.
- (127) Finally, it is worth mentioning that the Commission's conclusions, reached, *inter alia*, in the light of the market investigation amongst customers, are further substantiated by research carried out in the context of the econometric study. Alfred Berg indicates: 'The decisive factor as to whether a parallel branding strategy will be successful is clearly what the customers say. We have interviewed a number of the largest European hauliers to get their initial thoughts on the proposed merger. Judging from interviews with purchasing managers at small, medium and large fleet hauliers, there seems little to suggest that market shares should drop drastically in the short to medium term, given that the organisations maintain separate channels and management is kept intact'. The main factors relevant for this conclusion are the following: (a) separate distribution channels are a credible offer ('Most hauliers seem to be of the opinion that, as long as dealer networks are separate, they will continue to view both Volvo and Scania as separate offers in any truck tender'); (b) service networks reduce short-term risk ('The importance of the service networks reduces the risk of a massive fall in combined market shares in the short term, as competitors' networks, particularly in the Nordic countries, are relatively weak'; (c) no significant push from competitors ('Competitors naturally aim at moving their positions forward at the expense of Volvo and Scania. Amongst the hauliers we have talked to, none had, up to this point, noticed any increased marketing activity from any of the competitors').
- (128) In the reply Volvo claims that the results of the GfK surveys support Volvo's analysis of the shrinkage effect. For instance, the reply states that in Sweden 15 % of the top 20 customers of Volvo and Scania indicate that they will switch to a competitor as response to a merger 'in any event'. The corresponding figure in the small customer survey is 9 %. However, there is no reason to believe that these customers would eliminate Volvo and Scania completely from their fleets. Hence, even if 15 % of the large customers would introduce a new supplier this would not correspond to a 15 % market share loss among the large customers. If, for instance, the customers switch to competitors to substitute half of the Volvo and Scania trucks previously in the fleet, the

market share loss among the large customers would only be 7,5 %. Similarly, among the small customers the market share loss would be 4,5 %. This clearly illustrates that the GfK surveys indicate that a shrinkage effect of 15 % in Sweden is not realistic, especially when taking into consideration the relative number of small and large customers. Similar calculations can be made for the other Nordic countries and the United Kingdom where the same type of survey has been made. Hence, the conclusion must be that the GfK survey does not support Volvo's claim of shrinkage effects of [10 % to 20 %] in Sweden and Norway and [10 % to 20 %] in Denmark and Finland.

(129) Volvo also claims that the evidence from the Mercedes-Benz/Kässbohrer⁽¹⁷⁾ merger supports Volvo's calculation of a large shrinkage effect in the Nordic countries. After the oral hearing Volvo presented data that show a shrinkage effect over four years after the Mercedes-Benz/Kässbohrer merger of 3 % in inter city buses and 5 % in touring coaches. First, such figures do not in themselves support Volvo's claims about the magnitude of possible shrinkage effects in the heavy truck markets in the Nordic countries. Secondly, it is doubtful that effects which only materialise after four years can be defined as 'immediate', which is what Volvo contends in this case. Furthermore, it is evident that possible shrinkage effects have to be analysed in light of the specific circumstances of the markets in question, and in this context it may be noted that the Mercedes-Benz/Kässbohrer merger concerned the German markets, which are significantly larger and therefore potentially more attractive to new entrants than any of the Nordic markets, and that even after the Mercedes-Benz/Kässbohrer merger, there remained two independent German bus and coach suppliers (namely MAN and Neoplan), whereas this would not be the case in the Nordic countries.

(130) Finally, Volvo presents in its reply a figure called 'Effect of merger activities, Daf & Leyland, UK — impact on heavy duty market shares in home markets' and claims that it shows post-merger shrinkage after DAF's acquisition of Leyland in 1985. It is, however, not clear how the evolution of market shares over such a long period of time should be interpreted in relation to the shrinkage effect. In particular, the details of the market situation at the time of the merger, including the level of dual-sourcing, the previous evolution of market shares, etc., would need to be analysed before any conclusions could be drawn. Volvo has not provided any such information in its reply. Finally, it is surprising that Volvo has chosen not to provide details of the evolution of its own market

shares in the United Kingdom and Irish bus markets after it acquired Leyland buses (around the same time as DAF's acquisition of the Leyland truck division). Presumably, detailed information about any relevant shrinkage effect resulting from this operation is available to Volvo.

(131) In conclusion, Volvo, has not been able to substantiate its claims of a large market share loss as an immediate effect of this merger. Although there might be a certain shrinkage effect, the Commission considers that it may be of a much smaller size than that claimed by Volvo, and that in any event, Volvo has not shown that its effects will be such as to change the competitive assessment.

Barriers to entry and absence of potential competition

(132) As is apparent from the foregoing, in Sweden there is virtually no competitor to Volvo and Scania, with the exception of DaimlerChrysler, which has a very weak position corresponding to approximately 6 % of the market. This market structure has been broadly similar for a very large number of years. For the following reasons the Commission considers that other truck manufacturers will not exert a competitive pressure on New Volvo in Sweden.

(133) In particular, based on the assumption that, following the operation New Volvo would increase its prices by a small but significant amount, this price increase would not be sufficient for companies not present or having a very limited presence in Sweden to significantly penetrate the market or expand their presence in the market, given the following considerations.

(134) The results of the market investigation indicate that the cab crash test (described in the section on geographic market) constitutes a significant barrier to entry into the Swedish market for heavy trucks. Moreover, it strongly indicates that a strong presence on the service network level is essential for any truck manufacturer to become truly competitive and that Volvo and Scania have an additional advantage based on their well-spread service network in Sweden. The notion that such a network is available is essential to transport companies when they consider which truck brand to purchase. In the course of the market investigation, the difficulties in establishing a geographically, well-spread after sales network has been described as one of the main reasons for the very limited market entry by non-domestic producers. Especially for small and medium-sized truck operators, there is a high risk that a breakdown, which cannot be repaired immediately, will result in a direct loss of revenue (as such an operator may not have a replacement vehicle at its disposal).

⁽¹⁷⁾ See Case No IV/M.477 — Mercedes-Benz/Kässbohrer, Decision of 14 February 1995 (OJ L 211, 6.9.1995, p. 1).

(135) In addition, it appears from the market investigation that it is only when the number of trucks of the new

entrant will exceed a certain number, that the costs associated with the establishment/adaptation of a service network will be financially rewarding. During the initial period of establishment, until a sufficient installed base has been achieved, a new entrant may therefore have to run the service network at a loss. The establishment of a sufficient installed base is therefore a significant entry cost. For these reasons, an essential parameter for a new entrant will be the absolute attractiveness of the market, i.e. the number of trucks that it can expect to sell within a reasonable period in a given country.

(136) According to information in the possession of the Commission, in terms of time, a new entrant on the market would need at least five years to establish a sufficiently large network. The costs for the establishment of such a network in Sweden have been stated to be approximately EUR 20 million. This calculation is based on the hypothesis of a total network, in Sweden of five dealers, 14 branches and 92 service points, which would appear to constitute the very minimum target for Sweden⁽¹⁸⁾.

(137) Other costs would have to be incurred by the new entrant to effectively penetrate the market, when referring to the establishment of a service network (and bearing in mind the need to achieve a minimum market share, which would appear to be at least 10 % in the Nordic countries). The most important investments would include training for salesmen and workshop technicians (EUR 1 500 000), demonstration (demo) vehicles and demo drivers (EUR 1 500 000), 'seed vehicles' given for trial by important customers (EUR 1 000 000), and local advertising (EUR 1 000 000).

(138) Although in absolute terms the above costs may not seem extremely high, competitors have stated that they are not willing to make them unless they can be properly amortised. Seen in the context of the economic size of the market in question, it is submitted that it is highly unlikely that any truck manufacturer will decide to penetrate the Nordic heavy truck market, and the Swedish market in particular, in a way that would seriously challenge the position of New Volvo.

(139) Volvo has argued that a potential source of competition would come from DaimlerChrysler, since this company, although virtually absent from the heavy truck market, is well-placed in the medium-duty truck market in Sweden in particular, where it has approximately 31 % market share. According to Volvo, DaimlerChrysler would be in a position to easily adapt its network currently dedicated to medium-duty trucks in order to service heavy-duty trucks.

(140) As to this argument the following is noted. In the first place, the fact that DaimlerChrysler has not been in a position to gain a significant market share over a very long period of time is in itself a strong indication that market penetration is not easily achievable, even for a company enjoying a relatively strong position in medium-duty trucks. This consideration is further enhanced having regard to the high margins achieved by Volvo on its sales of heavy trucks in Sweden.

(141) In addition, the market investigation has revealed that, although market penetration in the heavy truck market by a truck manufacturer with a certain presence in the medium-duty segment may be easier, this penetration in any event involves costs which are such as to constitute a sufficient deterrent for market expansion. According to information collected on the market, to extend the capability of a light/medium truck network would require at least two years. In addition, the company in question would have to bear costs equal to 50 % of the costs indicated above, that is to say at least EUR 2 500 000 .

(142) These costs have to be compared to the total size of the market, which is relatively small for all Nordic countries. Therefore, in view of the time and costs associated with the need to establish a comprehensive dealer and service network in each of the Nordic countries, it is unlikely that any of the smaller competitors in those countries would, in the short to medium term, be able to match the current establishments of Scania, and thereby compensate for the loss of actual competition resulting from the proposed concentration.

(143) The conclusion that significant barriers to entry and/or expansion exist in the Nordic markets for heavy trucks is further strengthened by the fact that these countries are large but sparsely populated areas. Therefore, the Nordic market may not be the prime targets for future investments by DaimlerChrysler and the other suppliers that so far have only made limited inroads into the Nordic market, concentrating mainly on the most densely populated areas. Indeed, it would appear more likely that these competitors will focus their investments on eastern Europe and other markets where the growth prospects are better (as, indeed, Volvo itself intends to do). Consequently, it cannot be presumed that even the more sophisticated customers, who may want to increase purchases from alternative suppliers, will necessarily be able to find an alternative supplier who is able to provide the type of service that Scania has provided in competition with Volvo prior to the concentration.

⁽¹⁸⁾ As Scania and Volvo have, respectively 106 and 103 service points in Sweden, these figures appear plausible for a company that would want to put itself in a position to be equally attractive to Swedish truck operators as Volvo and Scania (before the proposed concentration). However, the indicated number of dealerships is significantly lower than those of Volvo and Scania (each about 30).

Conclusion

(144) On the basis of the foregoing it is concluded that it will be highly unlikely that actual or potential competition

or purchasing power among customers will be sufficient to restrict New Volvo from exercising its increased market power resulting from the acquisition of its only significant competitor and the resulting market share of over 90 %. In addition, Volvo's margins in Sweden, as indicated by Volvo itself for three chosen vehicle models, are high both in absolute terms and in relative terms when compared to margins obtained in some other Member States, especially outside the Nordic area.

- (145) It is therefore considered that the proposed operation would result in the creation of a dominant position in Sweden.

Denmark

Current structure of the market

Market shares

- (146) The current structure of the Danish market for heavy trucks is represented and summarised in the following table:

| Company | Market share in 1998 |
|-----------------|----------------------|
| Volvo | 28,7 % |
| Scania | 30,2 % |
| DaimlerChrysler | 17,7 % |
| MAN | 9,7 % |
| RVI | 3,3 % |
| Iveco | 6,8 % |
| DAF-Paccar | 3,8 % |

- (147) The table in recital 146 shows that currently only Volvo and Scania enjoy prominent market positions in Denmark. Although other truck manufacturers are better represented in Denmark than in the other Nordic countries, their presence remains relatively limited. Furthermore an analysis of the market shares of the different truck manufacturers over the years shows that the respective market presence of all relevant truck manufacturers has largely remained stable over time.

- (148) Furthermore, as already noted for Sweden (and, in fact, the same is true for all Nordic countries), graphs provided by Volvo relating to the evolution of market shares of Volvo and Scania over a long-term period

(10 years) show a direct correlation between the respective market position of the two companies. This is a strong indication that Volvo and Scania are currently each other's closest competitors, and have been for a very long time.

- (149) Most of the factual elements relating to the importance of the brand and brand loyalty, which have been analysed with regard to Sweden, also apply to Denmark.

- (150) A distinguishing feature of the Danish market is the similarities it shares with other continental countries; its geographic location, customer preference for tractor-type heavy trucks, the somewhat higher proportion of fleet customers (which to a certain extent is a consequence of the first element, as Denmark appears to have a relatively higher proportion of international traffic than the other Nordic countries). Nevertheless, Volvo's own price data shows that the price in Denmark is significantly lower than in neighbouring Germany (about [0 % to 10 %]). This means that the potential for Danish customers to resort to imports from Germany would be limited if there was a price increase after the implementation of the proposed concentration. It is, however, stressed that the number of fleet customers in Denmark is still relatively limited when compared to that of other Member States, such as in particular, the Netherlands, France and, to a lesser extent, the United Kingdom. It is, however, stressed that the market investigation has revealed that this type of customer also appears to be sensitive to Volvo's announcement of its intention to keep brands and marketing organisations separate, thereby implying that even for a relatively larger customer of heavy trucks, especially in the Nordic countries, Volvo and Scania brands are 'the brands', and are the closest competitors. Many of these customers believe that a decision not to keep brands separate would be detrimental to competition.

- (151) It is furthermore noted that some of these Danish fleet customers are in fact not truck operators themselves, but rather rental companies, whose activity is to rent single trucks or a number of trucks to, generally, small truck operators. This type of customer will in fact be dependent, as far as the demand for heavy trucks is concerned, on the requirements of the final customers, that are generally very small operators, and often sensitive to brand considerations. During the market investigation it has been thus submitted that the marketing of Mercedes trucks even at a rebated price (5 % to 15 %) has proved difficult.

- (152) Furthermore, Volvo has provided information relating to the percentage of a certain type of truck model ([a commonly sold model]) sold as a single-unit sales in different Member States. This information shows that more than half of these sales ([50 % to 60 %]) were made as single-unit sales, which indicates that a significant proportion of the Danish market is represented by sales to small operators.

Effects of the proposed operation on the Danish heavy truck market

Market shares — market structure

- (153) The proposed acquisition of Scania by Volvo would result in a New Volvo with a combined market share of approximately 60 % (28,7 % plus 30,2 %) in the Danish heavy truck market. The next competitor would be DaimlerChrysler, with a market share of 17,7 %, followed by MAN (9,7 %), RVI (4,2 %), Iveco (6,8 %) and DAF-Paccar (3,8 %).
- (154) Following the implementation of the proposed operation, the gap to the largest remaining competitor would increase from a ratio of 2:1 to more than 3:1. The proposed operation would result in the two main competitors on the Danish market joining forces. Furthermore, as in relation to Sweden, the proposed operation would result in the elimination of Volvo's closest competitor on the Danish heavy truck market.

Brand loyalty

- (155) Also in Denmark both Volvo and Scania enjoy the reputation of very strong brands, ensuring for truck customers the best package in terms of whole life cost, and for dealers large installed bases, on which the dealer has a better chance of making a good return on its investment. All the arguments put forward in this Decision as to the effects of the proposed operation in Sweden are largely applicable in Denmark. As in Sweden, in Denmark New Volvo will have specific strengths relating to the reputation of the brands, suitability of the trucks, secondhand value, and service network. Furthermore, the same arguments as to the alleged shrinkage effect that would result from the implementation of the proposed operation, apply for the Danish market.

Price discrimination

- (156) As already been mentioned, the vast majority of the Swedish demand for heavy trucks is composed of small to very small truck operators. Volvo has suggested that a comparatively larger part of the Danish market is composed of 'fleet customers', and that these customers are less sensitive to considerations linked solely to brand loyalty, and are in a better position to negotiate favourable conditions vis-à-vis a number of trucks manufacturers. However, it appears from the notification that Volvo's five major customers of heavy trucks in Denmark do not represent more than [0 % to 10 %] of Volvo's total sales of heavy trucks in that country. The importance of these largest buyers, as a proportion of the merged entity's sales, would decrease even further. Consequently, very few Danish truck customers will be in a strong position vis-à-vis New Volvo, and the potential impact of the fleet owners on the merged

entity's behaviour should not be exaggerated. In addition, there are indications that even for this category of customers (which includes rental companies), New Volvo may be in a position to raise prices, without being restricted from doing so by other truck manufacturers, given the strength of New Volvo, in terms of, *inter alia*, product suitability, secondhand value and aftersales services. As already stated, Volvo's decision to retain a dual-brand policy appears to have had the intended effect on customers.

- (157) However, even assuming that New Volvo would not be in a position to raise prices vis-à-vis the largest customers, there is evidence that it would be able to price discriminate smaller customers against larger customers, that is raise prices to smaller customers, who are less likely to switch to other truck manufacturers, and apply more favourable conditions to larger customers. As a matter of fact, the market investigation has made clear that the range of discounts granted by the truck manufacturer to customers can vary enormously depending, specifically, on the size of the customer and of the order at stake.

Barriers to entry and potential competition

- (158) The arguments already set out as to barriers to entry and unlikely entry/expansion on the market by other trucks manufacturers are also true for Denmark, which, although being a bigger market than each of the other Nordic countries, remains, in absolute terms, a very small market when compared to the larger Member States.
- (159) As regards the specific costs to be incurred by a truck manufacturer to penetrate the market, the market investigation has revealed that these costs would amount to EUR 21 million for the establishment of the network plus EUR 1 500 000 for the connected expenses (training, demo vehicles, 'seed vehicles', local advertising). The adaptation of an existing network could require up to 50 % of this sum. Although in absolute terms the above costs may not seem extremely high, competitors have stated that they are not willing to make them unless they can be properly amortised. The costs must be seen in the light of the economic size of the market in question.

Conclusion

- (160) On the basis of the foregoing it is concluded that it is highly unlikely that actual or potential competition or purchasing power among customers will be sufficient to restrict New Volvo from exercising its increased market power resulting from the acquisition of its only significant competitor and the resulting market shares of 60 %. It is therefore considered that, if the Danish heavy truck market were to be considered as constituting a separate geographical market, the proposed operation would result in the creation of a dominant position in Denmark.

Norway**Effects of the proposed operation on the Norwegian heavy truck market****Current structure of the market***Market shares — market structure**Market shares*

- (161) The current structure of the Norwegian market for heavy trucks is represented and summarised in the following table:

| Company | Market share in 1998 |
|-----------------|----------------------|
| Volvo | 38,0 % |
| Scania | 32,2 % |
| DaimlerChrysler | 9,3 % |
| MAN | 12,5 % |
| RVI | 0,8 % |
| Iveco | 2,0 % |
| DAF-Paccar | 4,1 % |

- (162) The table in recital 161 shows that currently only Volvo and Scania enjoy very strong market positions in Norway. The next competitor to Volvo and Scania in Norway is MAN with a market share of about one third of that enjoyed individually by both Volvo and Scania. Besides MAN, all other trucks manufacturers have market shares well below 10 % and, in most cases, below 5 %. Furthermore an analysis of the market shares of the different trucks manufacturers over the years shows that the respective market presence of all relevant truck manufacturers has largely remained stable over time.

- (163) Furthermore, as already noted for Sweden and Denmark (and the same is, in fact, true of all Nordic countries) graphs provided by Volvo relating to the evolution of market shares over a long-term period (10 years) show a direct correlation between the respective market position of the two companies. This is a strong indication that Volvo and Scania are currently each other's closest competitors, and have been for a very long time.

- (164) Most of the factual elements relating to the extreme importance of the brand and brand loyalty, which have been analysed with regard to Sweden and Denmark, also apply to Norway.

- (165) The proposed acquisition of Scania by Volvo would result in a New Volvo with a combined market share of approximately 70 % (Volvo: 38 % and Scania: 32,2 %) in the Norwegian heavy truck market. The next competitor would be MAN, with a market share of 12,5 %, followed by DaimlerChrysler (9,3 %), RVI (0,8 %), Iveco (2 %), DAF-Paccar (4,1 %).

- (166) Following implementation of the proposed operation, the gap to the largest remaining competitor would increase from a ratio of 3:1 to more than 5:1. The proposed operation would result in the two main competitors on the Norwegian market joining forces. With the exception of MAN, all other competitors would have a market share of less than 10 % and most of them of less than 5 %. Furthermore, as noted for Sweden and Denmark, the proposed operation would result in the elimination of the two closest competitors on the Norwegian heavy truck market.

Brand loyalty

- (167) Also in Norway, both Volvo and Scania enjoy the reputation of very strong brands, ensuring for truck customers the best package in terms of whole life cost, and for dealers large installed bases, on which the dealer has a better chance of making a good return on its investment. All the arguments put forward in this Decision as to the effects of the proposed operation in Sweden are equally applicable in Norway. As is the case in Sweden, in Norway New Volvo will have specific strengths when compared to all other truck manufacturers, especially having regard to reputation of the brand, suitability of the trucks, secondhand value and service network. Furthermore, the same arguments as to the alleged shrinkage effect that would result from the implementation of the proposed apply for the Norwegian market.

- (168) It has been brought to the Commission's attention that trucks sold in Norway have to meet specific technical requirements, given specific conditions due to, *inter alia*, temperature, ice, snow and topography. In this context, it is important to note that Volvo and Scania have the best experience and reputation for selling trucks which can, in a reliable manner, satisfy the final customer's needs in these conditions.

- (169) Finally, according to the notification, prices for Volvo's most commonly sold models in Norway are substantially higher than in other countries (indeed, according to these figures, the company has even managed to price its products in Norway at a higher level than that applied in Sweden and Denmark).

Price discrimination

(170) Volvo has also suggested that a comparatively larger part of the Norwegian market is composed of fleet customers. The proportion of such customers in Norway is, however, even lower than in Denmark. The potential impact of the behaviour of such large customers in Norway must therefore be regarded as relatively insignificant. However, even assuming that New Volvo would not be in a position to raise prices for the limited number of Norwegian fleet customers, it is likely to be able to price discriminate between smaller customers and larger customers, that is raise prices to smaller customers, who, will not switch to other truck manufacturers, and apply more favourable conditions to larger customers. As a matter of fact, the market investigation has made clear that the range of discounts granted by the truck manufacturer to customers can vary enormously depending, specifically, on the size of the customer and of the order at stake.

Barriers to entry and potential competition

(171) The arguments set out already as to barriers to entry and unlikely entry/expansion on the market by other truck manufacturers are also true for Norway, which is an even smaller market than Sweden, and a very small market when compared to the larger Member States.

(172) As regards the specific costs to be incurred by a truck manufacturer to penetrate the market, the market investigation has revealed that these costs would amount to EUR 15,5 million for the establishment of the network plus EUR 1 200 000 for the connected expenses (training, demo vehicles, 'seed vehicles', local advertising). The adaptation of an existing network could require up to 50 % of this sum. Although in absolute terms the above costs may not seem extremely high, competitors have stated that they are not willing to make them unless they can be properly amortised. The costs must be seen in the light of the economic size of the market in question.

Conclusion

(173) On the basis of the foregoing, the Commission concludes that it is highly unlikely that actual or potential competition or purchasing power among customers will be sufficient to restrict New Volvo from exercising its increased market power resulting from the acquisition of its only significant competitor and the resulting market share of 70 %. The Commission therefore considers that the proposed operation would result in the creation of a dominant position in Norway.

Finland**Current structure of the market***Market shares*

(174) The current structure of the Finnish market for heavy trucks is represented and summarised in the following table:

| Company | Market share in 1998 |
|-----------------|----------------------|
| Volvo | 34 % |
| Scania | 31 % |
| Renault/Sisu | 18 % |
| DaimlerChrysler | 10 % |
| Iveco | 4 % |
| MAN | 3 % |
| DAF/Paccard | < 1 % |

(175) The table in recital 174 shows that at present Volvo and Scania are by far the leading competitors on the Finnish market for heavy trucks. Both Volvo and Scania have a market share, which is approximately twice that of the closest competitor Renault, which has an extensive cooperation with the Finnish company Sisu (it appears that Sisu trucks, which are only sold in Finland, are assembled using mainly components produced by Renault). For this reason, it appears appropriate for this assessment to combine the activities of Renault and Sisu. DaimlerChrysler, the clear market leader in the market for heavy trucks in the EEA, has less than one third of the market share of either Volvo or Scania in Finland. Iveco, MAN and DAF/Paccard are present on the Finnish market for heavy trucks only to a limited extent.

(176) As was shown by the graphs in recital 82, Volvo and Scania have both retained high and relatively stable market shares over the last 10-year period. The graph also indicates that they are in direct competition with one another. This is true, in particular, for the last five years of the period, as the graph shows a strong negative correlation between the two makes in the sense that an increase in market share by one of the two companies corresponds to a loss of market share for the other. It should be noted that there has been a more distinctively negative correlation between Volvo and Scania in this period, when, as will be indicated below, Sisu has lost significant market shares.

Brand

(177) Both Volvo and Scania are perceived as high-value brands particularly well-adapted to the Nordic weather and road conditions. The strength of the respective brands is based on the high quality of the trucks manufactured, their effective and very well-spread aftersales network in Finland and the high secondhand value of the vehicles. All these elements make these two brands the most-favoured brands in Finland.

(178) The market investigation has confirmed the inelasticity of demand in the heavy truck market. Purchasers of heavy trucks typically have regard for the whole life cost of the vehicle including the initial purchase price, aftersales network, warranties and secondhand value. Price is thus only one of the elements, determining the choice for a heavy truck. In Finland, only Volvo and Scania and to some extent Renault/Sisu have been able to offer a package including a good balance of all these elements. However, in the reply Volvo indicated that Sisu, as late as 1993, had a market share of 30 %, of which close to half was lost in the following five years.

(179) Price information in the possession of the Commission further shows that the parties' pricing for heavy trucks in Finland is consistently higher, for comparable models, than pricing applied by other potential competitors. It can therefore be concluded that not only the initial price paid for the purchase of the heavy truck but also the presence of a number of elements, namely the aftersales network and the secondhand value, which offset the higher price paid for the initial purchase, play an important role in a purchase decision.

(180) Volvo and Scania have been able to build up over time a loyalty vis-à-vis their own respective brands in Finland. As already explained, the loyalty is expressed at least at two levels: at the level of the dealer and at the level of the final purchaser, the truck operator.

Brand loyalty — service network

(181) The market investigation has provided indications that in the heavy truck market a well-spread and effective aftersales network is crucial for any truck manufacturer to penetrate a market. Both Volvo and Scania have an extensive aftersales network in Finland. The strength of a service network is represented by its density, by the technical capability of a given dealer/service point to serve the truck operator, and by the contacts existing between the dealer/service points and the truck operator.

(182) The market investigation indicates that a certain level of truck population is necessary in order to ensure the dealer/service point an adequate return on investment. On the basis of their installed base of vehicles in Finland, Volvo and Scania are clearly in the best position to attract dealers and service points. This, in turn, gives them an advantage in terms of having a well-spread and effective aftersales network in Finland. After a number of years good contacts between the dealer/service points and the truck operator turn into relationships of trust between the dealer/service point and the truck operator. This relationship of trust is part of the reputation of the brand.

Brand loyalty — final customer

(183) The market investigation has also provided indications that in Finland final purchasers of heavy trucks also tend to be loyal to the Volvo and Scania brands. Volvo and Scania are the only manufacturers (possibly with the addition of Renault/Sisu, which has a significantly smaller and decreasing market share), which are in a position to offer customers in Finland the best package in terms of whole life cost of a truck. According to truck customers contracted, Volvo and Scania are generally regarded as the best placed manufacturers to provide truck purchasers with trucks suitable to the climatic conditions in Finland and satisfying the technical requirements, including national legislation.

(184) According to the information obtained from the Finnish Truck Association⁽¹⁹⁾ about its members in 1999, the repartition of the number of trucks owned by truck companies was as follow:

| Number of trucks/Company | Percentage of such companies of all truck companies |
|--------------------------|---|
| 1 | 66 % |
| 2 | 18 % |
| 3-4 | 10 % |
| 5-10 | 5 % |
| 11-15 | 0,5 % |
| 16-20 | 0,1 % |
| 21- | 0,2 % |

(185) The figures in recital 184 include the light, medium-heavy and heavy trucks. The figures indicate that the vast majority, over 80 %, of Finnish truck companies operate one to two trucks. In comparing the data with

⁽¹⁹⁾ Source: 'Kuorma-autoliikenne Suomessa 1999', by Suomen Kuorma-autoliitto p. 16, ('Truck-transport in Finland 1999', The Finnish Truck Association), p. 16.

the results of the market investigation, there is nothing to suggest that the repartition of heavy trucks would be considerably different. In general, small customers will be more sensitive to the brand loyalty considerations discussed above than customers with a large number of trucks in their fleets.

Effects of the proposed operation on the Finnish heavy truck market

Market shares

- (186) The proposed acquisition by Volvo and Scania would result in a New Volvo whose combined market share in Finland would be equal to 65 % of the market according to 1998 figures. The next competitor to the new entity is Renault/Sisu with a current market share of 18 %. It should be noted that Renault's involvement with Sisu does not appear to have had any significant impact on the company's market position (indeed, according to Volvo's own figures, Sisu has lost a significant part of its sales since 1993). The next competitor is Daimler-Chrysler with a market share of 10 %. The other European truck manufacturers would continue to have a considerably smaller share of the market: Iveco 4 %, MAN 3 %, DAF/Paccar < 1 %.
- (187) Therefore, the proposed operation results first in a significant overlap between the parties' activities in Finland. The proposed concentration would also significantly increase the market share gap between New Volvo and its closest competitors. Prior to the concentration the closest remaining competitor Renault/Sisu had a market share that was approximately half that of the market leader. Following the implementation of the concentration Renault/Sisu would have a market share that is almost four times smaller than that of the new entity. Similarly, prior to the concentration Daimler-Chrysler, the European market leader in heavy trucks, holds a market share of one third of that of the market leader in Finland. Following the proposed acquisition it would have a market share more than six times smaller than that of New Volvo.
- (188) Secondly, the information provided by Volvo (further corroborated by the graphs in recital 82), as well as the Commission's investigation, clearly supports a finding that, prior to the proposed concentration, Volvo and Scania have been each other's main competitors. The proposed concentration would result in the loss of this competition and the advantage that New Volvo would have over the remaining competitors would also increase significantly in Finland.
- (189) Finally, the situation is further aggravated by the fact that, as in Sweden, the very strong market position of both Volvo and Scania in Finland is not a recent phenomenon or the result of strong variations in market shares. It is therefore not likely that other truck

manufacturers will maintain considerable competitive pressure on the parties. An evaluation of the respective market shares of the parties in Finland, illustrated by the graphs in recital 82, indicates that the respective market position of Volvo and Scania has remained relatively stable over a long period of time. This is further confirmed by the market investigation.

Dealer and customer loyalty

- (190) New Volvo will be in a position to operate on the heavy truck market in Finland on the basis of Volvo's and Scania's combined specific strengths. It will continue to benefit from a traditional dealer and customer loyalty for both brands. The market investigation has shown that competitors of Volvo and Scania may face significant difficulties in establishing a sufficiently dense network of dealers/service points in Finland, compared to that of Volvo and Scania. This is essentially because such a network must necessarily rely on a sufficient return on investment based on a sufficiently large population of trucks in circulation in Finland.

Customer structure

- (191) Given the market structure on the demand side, namely the large number of small truck companies in Finland, the new entity will be in a position to profit from the customer loyalty of both brands and therefore also be in a position to raise prices. On the basis of the information provided by Volvo in the notification, it appears that none of Volvo's largest EEA customers by fleet size have activities in Finland. In addition, Volvo's five major customers for heavy trucks in Finland represent only [0 % to 10 %] of Volvo's total sales in that country and Scania's sales to its five major customers [0 % to 10 %] of its total sales in Finland.
- (192) According to supplementary information provided by Volvo at the request of the Commission, this conclusion is further corroborated by the following elements. According to Volvo's own estimates (see page 5 of submission dated 25 November 1999), its sales of a specific model of heavy truck ([...]), which is a commonly sold model in Finland⁽²⁰⁾, show that [70 % to 80 %] of the total number of these trucks sold in Finland are sold as single unit sales and [20 % to 30 %] as multi-unit sales.

Customer structure and dual-sourcing

- (193) Volvo maintains also that many of their truck customers in the Nordic countries are sophisticated professional buyers with a policy of dual-sourcing. According to Volvo, these customers currently pursue a policy of double-sourcing or multi-sourcing, in order not to be dependent on a single truck manufacturer. Whereas some Finnish truck customers submit that they keep

⁽²⁰⁾ According to Volvo [...] is the highest or second highest volume model in all of the Nordic countries and in 1998 accounted for [20 % to 30 %] of all Volvo heavy trucks sales in the Nordic region.

two brands (most often Volvo and Scania) in their truck fleet in order to exert competitive pressure on the other brand, the smaller truck operators in particular, which, as indicated in recital 184, represent the vast majority of Finnish truck companies, have a strong interest in limiting the fleet to one make. The advantages related to such a strategy (lower costs for maintenance and training of personnel) that have already been described in relation to Sweden are equally applicable in Finland.

Customer structure and shrinkage effect in Finland

- (194) According to Volvo, the proposed operation will inevitably result in a shrinkage effect, i.e. in current Volvo and Scania heavy truck customers switching to other makes. The proposed operation would, in Volvo's view, result in a loss of customers, in percentage of market share, corresponding to 15 % in Finland. The Commission's reasons for not placing as much faith as Volvo in this theory have been presented in the section concerning Sweden.

Barriers to entry and absence of potential competition

- (195) As can be concluded from the foregoing, Volvo and Scania are the two main competitors on the Finnish heavy trucks market, where Renault/Sisu and DaimlerChrysler have a much weaker position corresponding to approximately 18 % and 10 % of the market respectively. The market structure has remained relatively constant in this respect for at least a decade. It is the view of the Commission that other truck manufacturers will not be able to exert a significant competitive pressure on New Volvo in Finland. This conclusion is based on the following reasons.
- (196) In particular, based on the assumption that following the operation, New Volvo would increase its prices for heavy trucks by a small but significant amount, this price increase would not be sufficient to enable companies not present or having a very limited presence in Finland to sufficiently penetrate the market, or expand their presence.
- (197) As already stated, the market investigation indicates that the costs associated with the establishment/adaptation of a service network will only be financially rewarding when the number of trucks of the new entrant exceeds a certain level. Establishing such a network will take several years and require considerable investment from the manufacturer. In carrying out the calculation, an essential parameter for the new entrant will be the absolute attractiveness of the market, i.e. the number of trucks that can be sold in a given country. Adaptation of a service network also comprises training for salesmen and workshop technicians, demo vehicles, demo drivers, 'seed vehicles' and local advertising.

- (198) The results of the market investigation clearly indicate that a strong presence at the service network level is essential for any truck manufacturer to become truly competitive. Volvo and Scania have both been able to establish a well-spread service network in Finland. The extent of the service network is an essential factor for truck companies when considering which truck brand to purchase. According to the market investigation, the difficulty for, for instance DaimlerChrysler, in establishing a comparable geographically well-spread after-sales network to Volvo or Scania for heavy trucks in Finland, is indicative of the so far relatively limited presence of DaimlerChrysler or of other European truck manufacturers in Finland. The manufacturers' inability to repair a truck immediately may, especially for small operators, result in a direct loss of revenue.

- (199) With regard to the limited size of the Finnish market, time and costs associated with the need to establish a comprehensive dealer and service network and the already much weaker position of competitors of Volvo and Scania in Finland, it appears unlikely that following the proposed concentration, any of these manufacturers, including DaimlerChrysler, would be in a position to significantly extend its service network or, with regard to a new entrant, efficiently penetrate the heavy truck market in Finland. Therefore, it is unlikely that any of the smaller competitors will, in the short to medium term, be able to match the current position of Scania on the Finnish market, and thereby compensate for the loss of actual competition resulting from the proposed concentration. Such a loss of actual competition has also been considered among customers as resulting in a significant deterioration of competition on the heavy trucks market in Finland.

- (200) As already discussed in the section concerning the Swedish heavy trucks market, Nordic markets including Finland may not be the prime targets for future investments by DaimlerChrysler and the other European manufacturers that have less presence in Finland, given the already significant barriers to entry and the relatively small size of the market. Markets in eastern Europe are more likely to offer better growth prospects for manufacturers like DaimlerChrysler. Consequently, even the more sophisticated customers may face difficulties in finding an alternative supplier able to provide the type of vehicles and services that Volvo and Scania have provided prior to the concentration in Finland.

Conclusion

- (201) On the basis of the foregoing, the Commission concludes that it is highly unlikely that actual or potential competition or purchasing power among customers will be sufficient to restrict New Volvo from exercising its increased market power resulting from the acquisition of its only significant competitor and the resulting market share of 65 %.
- (202) For all these reasons, the Commission therefore considers that the proposed operation would result in the creation of a dominant position in Finland.

Ireland**Current structure of the market***Market shares*

- (203) The current structure of the Irish market for heavy trucks is represented and summarised in the following table:

| Company | Market share in 1998 |
|-----------------|----------------------|
| Volvo | 22,0 % |
| Scania | 27,1 % |
| DaimlerChrysler | 8,6 % |
| MAN | 6,2 % |
| RVI | 2,7 % |
| Iveco | 8,0 % |
| DAF/Paccar | 13,2 % |

- (204) The table in recital 203 shows that Scania is the market leader in Ireland with 27 % market share, and the closest substantial competitor is Volvo with 22 % market share. All other truck manufacturers enjoy much weaker market positions, and, with the exception of DAF-Paccar which has a market share of approximately 13 %, all other truck manufacturers are quite weak with market shares below (or well below) 10 %.
- (205) On the basis of the figures in recital 203 it therefore follows that before the proposed operation Volvo and Scania together represent nearly 50 % of the Irish heavy truck market, and that they are the main competitors in that country.

Effects of the proposed operation on the Irish heavy truck market*Market shares — market structure*

- (206) The proposed acquisition of Scania by Volvo would result in a New Volvo with a combined market share of approximately 50 % in the Irish heavy truck market. The next competitor would be DAF/Paccar, with a market share of 13,2 %, followed by DaimlerChrysler (8,6 %), Iveco (8,0 %), MAN (6,2 %) and RVI (2,7 %).
- (207) Following implementation of the proposed operation, New Volvo would obtain a market share of nearly 50 % in Ireland, which leads to the presumption of the existence of a dominant position.
- (208) This is compounded by the fact that both parties have enjoyed high and relatively stable market shares in Ireland over the last three years. According to the notification, Volvo's market share in 1996 was 23 % and its market share in 1997 was 27 %. Scania had 29 % in 1996 and 27 % in 1997. Over the same period, DAF/Paccar, Daimler-Chrysler and MAN have increased their market shares somewhat, but remain below 10 %, with the exception of DAF/Paccar. RVI and, in particular, Iveco have lost market shares over the last three years. It appears that the gains by DAF/Paccar DaimlerChrysler and MAN correspond to the loss of market share by RVI and Iveco.
- (209) The proposed operation would result in the combination of the two leading suppliers on the market. Moreover, the next largest competitor would be far smaller, with a market share of only 13 %, or about one quarter of that of New Volvo. Furthermore, the market share development over the last three years indicates that the high and relatively stable combined market share of Volvo and Scania is relatively unaffected by market share variations within the group of smaller competitors.

Brand loyalty

- (210) Again, the existing evidence indicates that the proposed concentration would mean that the two strongest brands would combine their forces. Both Volvo and Scania have developed a loyalty in Ireland over the years, through offering competitive packages to truck operators, including not only the price for the truck, but also excellent terms of warranty and aftersales service. Their respective market positions would now be consolidated. The market shares of Volvo and Scania taken together have not been subject to significant fluctuation over the last three years.

Barriers to entry and potential competition

(211) The arguments set out already as to barriers to entry and unlikely entry/expansion on the market by other truck manufacturers for the Nordic countries also apply in relation to Ireland. Ireland has many similar features to the Nordic markets, a dispersed customer structure (where, for example, the five largest Volvo customers only account for [10 % to 20 %] of total Volvo sales and the five largest Scania customers account for [0 % to 10 %] of Scania sales), a small market size and the market is relatively unattractive for investments. In fact, the Irish market for heavy trucks is extremely small. Its annual volume is, for example, approximately half of that of the Danish heavy truck market. It is therefore unlikely, even in the event of a price increase, that other heavy truck manufacturers would find it an attractive target for expansion and/or entry.

Conclusion

(212) For these reasons the Commission concludes that the proposed operation will result in the creation of a dominant position in Ireland.

Overall conclusion on the market for heavy trucks

(213) On the basis of the foregoing, it can be concluded that the proposed concentration would create a dominant position on the markets for heavy trucks in Sweden, Norway, Finland and Ireland. There are strong indications that this would also be the case in Denmark. However, this question does not have to be settled in the context of the current proceedings.

*(ii) BUSES AND COACHES***A. RELEVANT PRODUCT MARKET**

(214) The proposed operation will also produce a major impact on the bus market. The operation will create the second largest European bus manufacturer after DaimlerChrysler.

(215) The Commission has already examined the bus and coach markets on several occasions⁽²¹⁾. In the most recent decisions, the Commission has concluded that although the boundaries between the main different segments of buses and coaches are not rigid, there are three categories of bus, each corresponding to a separate product market. The categories are city buses, intercity buses and touring coaches.

(216) In general, buses are typically designed for a specific type of travel service. City buses are, for example, designed for a type of travel where people typically spend a few minutes or, at any rate, only a short time on the bus and where easy entry and exit is important. Touring coaches, on the other hand, are designed for transporting people over long distances, where people spend hours or even days in the vehicle. The design of touring coaches emphasises comfort and storage space rather than ease of entry and exit.

(217) The different requirements of different types of transport service mean that buses are heterogeneous products. Broadly speaking, the market can be described as having, at one extreme, low-floor city buses with more and/or wider doors for public transport services in urban areas and at the other extreme, luxurious double-decker touring coaches for long-distance tourist travel. A large number of different types of bus exists in between. Furthermore, the various types of bus are available in different sizes. Demand is therefore very diverse, since the bus operator will demand a bus designed specifically for the transport services it expects to provide.

(218) In the notification, the relevant market is defined as the overall bus market. In particular, Volvo notes that: (i) the supply-side factors that would lead to the assessment of these three segments as a single product market would be particularly applicable in the case of both Volvo and Scania, as, according to the most recently submitted figures, they achieve [50 % to 60 %] and [20 % to 30 %] of their respective EEA sales by selling chassis only, and since the same chassis is used for different types of bus; (ii) the major European bus producers are present in all segments and largely occupy the same relative position in terms of sales share; (iii) the development of an EEA-wide market for city and intercity buses significantly diminishes one of the earlier distinctions between city and intercity buses, on the one hand, and coaches, on the other; (iv) the boundaries between city and intercity buses, on the one hand, and intercity buses and touring coaches, on the other, are fluid. In the notification, the notifying party concludes that this would be particularly true in the Nordic countries where there are very few large cities with exclusively urban traffic.

(219) At the oral hearing, Volvo maintained this position and repeated that there is no distinct boundary between the three segments of city and intercity buses and touring coaches. According to Volvo, low-floor city buses are being used for intercity operations, whilst low-floor or standard floor-height intercity buses are used for city operations. Likewise, coaches are used for intercity operations and intercity buses for coach operations. The notifying party further contends that, particularly in Finland and the United Kingdom, 'midi buses', which are smaller in size and weight, are used for the same type of

⁽²¹⁾ See Case No IV/M.477 — Mercedes-Benz/Kässbohrer, Decision of 14 February 1995 (OJ L 211, 6.9.1995, p. 1), and Case No IV/M.1202 — Renault/Iveco, Decision of 22 October 1998.

travel service as large buses. Also, concerning the chassis components, for example the engine and gearbox, Volvo maintains that there is a great overlap between the three bus segments. As will be shown in the following section, despite the fact that boundaries between these three segments are fluid to some extent, this cannot be taken as the decisive element establishing the existence of one single product market.

Buses are heterogeneous products with low demand-side substitutability

(220) The line of reasoning put forward by Volvo, both in the notification and at the oral hearing, that there exists a single relevant market for all buses, cannot be accepted. Clearly, there is no demand-side substitutability between a low-floor city bus with room for a large number of standing passengers and a double-decker touring coach with toilet, video and kitchen. There exists between these two extremes a range of different types of bus, which, on the basis of their design and equipment, are suited for a large number of different purposes. In general, it may be said that requirements in terms of technical specifications and equipment, which determine the ride and travelling comfort for passengers, increase with the distance for which the bus is primarily intended. Thus, such requirements increase in proportion to the extent to which a given type of bus is intended more for touring than for scheduled services. Nevertheless, contrary to the view taken by the notifying party in the notification and at the oral hearing, it cannot be deduced from this gradual transition to greater comfort and more luxurious equipment, and from the resulting heterogeneity of buses, that the market for buses consists of a single relevant market. The difficulty in determining a precise demarcation of the market within a broad and highly differentiated product range cannot be accepted as the basis for dispensing with a market definition altogether despite the obvious lack of substitutability between particular products.

(221) In 1990 and 1991, the Commission took the view in two Decisions⁽²²⁾ concerning the French market that two markets — buses operating in public transport and touring coaches — would have to be distinguished. In 1995, the Commission adopted a Decision concerning the German market⁽²³⁾ and in 1998 a Decision relating to the Italian, French and Spanish markets⁽²⁴⁾. Whilst both Volvo and Scania are active across the EEA, their market position is significantly stronger in northern

Europe. Consequently, the Commission's market investigation in the present case is particularly focused on the Nordic area of Europe (namely, Denmark, Finland, Norway and Sweden) as well as the United Kingdom and Ireland.

Differences in technical characteristics

(222) The Commission's market investigation in this case shows that there is a clear distinction between, in particular, city/intercity buses on the one hand and touring coaches on the other hand. This applies both to the supply- and demand-side of the market.

(223) The supply-side data submitted by Volvo and Scania as well as data obtained from other suppliers confirm that there are important differences in terms of chassis characteristics between the various types of bus. Thus, the parties' best-selling chassis model of a city bus is in most countries a low-floor or low-entry, two-axle bus with a relatively low horsepower engine (typically around 250 hp). The parties' best-selling coach chassis, on the other hand, is a high-floor bus with an engine of around 400 hp. Furthermore, in some countries the best-selling coach is a three-axle vehicle. A typical intercity bus will generally have a high floor, but a relatively weaker engine than a touring coach. Intercity buses may also be longer than city buses and coaches. Articulated buses are used primarily for intercity services.

(224) From a demand-side point of view, these differences in technical characteristics do not only necessitate a decision as to the primary intended use of the vehicle, but also result in important price differences between (chassis for) city buses, intercity buses and coaches.

(225) As a reminder, the main features of the three types of bus may be summarised as follows.

(a) *City buses*

City buses are designed for public transport in urban areas. They tend to have a low floor (or low entry) without any steps, as well as more and wider doors than other types of bus. Only city buses will be designed to have room for standing passengers. The main feature of city buses is that they are constructed primarily with a view to facilitate frequent entry and exit. The main customers are municipal and local authorities and, in countries where public transport has been privatised, private operators which have won tenders to provide bus transport services on behalf of such municipal and local authorities.

⁽²²⁾ See Case No IV/M.004 — Renault/Volvo, Decision of 7 November 1990, point 15; Case No IV/M.092 — Renault/Heuliez, Decision of 3 June 1991, point 5.

⁽²³⁾ See Case No IV/M.477 — Mercedes-Benz/Kässbohrer, Decision of 14 February 1995 (OJ L 211, 6.9.1995, p. 1).

⁽²⁴⁾ See Case No IV/M.1202 — Renault/Iveco, Decision of 22 October 1998.

(b) *Intercity buses*

Intercity buses are designed for public transport in rural districts and public intercity travel. In common with city buses, these buses do not normally have particularly luxurious equipment. From a technical point of view, they are, for the most part, not low-floor buses and generally have more powerful engines than city buses (but less so than touring coaches). Due to the nature of the service, features that facilitate entry and exit are less important than in city buses. The main customers are regional public bus operators, as well as private companies operating scheduled services. Buyers of intercity buses are often also customers for city buses.

(c) *Touring coaches*

Touring coaches are primarily intended to serve the leisure market, mainly for long-distance tourist travel. As with intercity buses, features that facilitate frequent entry and exit are not prioritised in touring coaches. A touring coach will normally be equipped with a manual gearbox, whereas the two other types of bus will have automatic gearboxes. Touring coaches tend to be higher than intercity buses and are equipped in a comparatively luxurious manner. They are often equipped with more luggage space, air conditioning, toilets and television screens, which make such buses more suitable for long trips. The main customers are private operators of leisure or charter trips. The market investigation has shown that certain operators, during off-season periods, may use their touring coaches for other purposes, for example intercity services. The fact that a touring coach can have a secondary field of application does not, however, imply that there would be any significant substitutability between these products and, for example, intercity buses.

- (226) The Commission also notes that this division of the overall bus market into three segments is generally reflected in the sales literature of all the suppliers, and is widely accepted by suppliers and customers in the market.

Distinct buyer groups

- (227) A further distinction has to be drawn on the basis of the type of customer. City and intercity buses are normally bought by public or private operators in charge of scheduled public transport services. In this respect, it has been brought to the Commission's attention that public authorities in charge of public transport continue to influence demand conditions even in countries where privatisation of such services has taken place, for example, by specifying detailed requirements as to the vehicle specifications in the request for competitive tenders for the operation of scheduled bus services. In this respect, it should be noted that, following privatisation, the tender procedure will normally no

longer apply to the purchasing of the vehicles as such, as these purchases will no longer be made by the public authorities. Sales of touring coaches, on the other hand, are normally not influenced by public authorities, as touring coaches are bought by private operators and used for leisure transport. Therefore, whilst it can be an important competitive parameter for a leisure travel operator to offer a luxuriously equipped touring coach, this is often not the case for companies operating public city and intercity transport, as, for these services, the specifications for the vehicle will normally be set by the public authority organising the service and the tendering procedure.

- (228) The market investigation has revealed a second important distinction on the customer side. Prior to privatisation and liberalisation of the bus transport sector, most bus companies were only active on a local or regional basis. However, over the last decade, the liberalisation of public scheduled city and intercity bus services has led to the creation of a number of large national, and in some cases even international, bus fleet operators. Also the notifying party has emphasised throughout the procedure the rapid pace of the consolidation process that has taken place on the part of bus operators in the past decade, whereby the bus customers' fleet sizes have increased considerably and thus also their buying power vis-à-vis bus manufacturers. Nevertheless, the market investigation has shown that bus manufacturers can, and do discriminate between the price and other conditions granted to small and large customers, and that purchasing preferences between these groups can vary significantly. It will therefore be appropriate to consider in the assessment below, that bus manufacturers are able to price discriminate between small and large customers.

Supply-side substitutability is not effective

- (229) As regards supply-side substitutability, the market investigation has confirmed Volvo's contention that all major bus manufacturers in Europe are present in all three segments. However, contrary to Volvo's contention, the relative positions of these manufacturers, in terms of sales, differ substantially when comparing, on the one hand, their sales of the three types of bus, and, on the other hand, each supplier's market share in each Member State or group of Member States, and in Europe as a whole. This element will be further examined when considering the geographic dimension of the markets.

Conclusion on relevant product markets

(230) As already stated, there are significant differences between a typical city bus, intercity bus and touring coach. Given that the buyer of a bus, in any purchasing situation, will have a definite idea as to the type of service for which the vehicle is primarily intended, the substitutability between the various types of bus will necessarily be low. It is therefore likely that the merged entity would be able to take advantage of this in the future, if it were to achieve increased market power in one or more of the three vehicle types as a result of the notified transaction. For these reasons, the Commission considers it appropriate to assess the competitive impact of the notified transaction on the basis of separate markets for city buses, intercity buses and touring coaches.

B. RELEVANT GEOGRAPHIC MARKETS

(231) In the notification, Volvo submits that the relevant geographic market for touring coaches, city buses, and intercity buses is at least the EEA, and claims that this conclusion is supported by evidence relating to price levels, which have been stated as generally being, with a few exceptions, within a $\pm 10\%$ range throughout the EEA. Furthermore, Volvo considers that there are no national barriers to entry, which is confirmed by presence of all the leading producers throughout the EEA.

(232) In its reply and at the oral hearing, Volvo maintained that price discrimination and import penetration should in general constitute the appropriate focus of the geographic market definition instead of non-price factors, such as customer preferences, technical requirements, purchasing habits and market shares. With reference to the Commission's decision in the Mercedes-Benz/Kässbohrer case, Volvo claims that price comparisons for buses and coaches are rendered difficult by differences in the type of bus, in equipment and in determining transaction prices. Therefore, in its reply it did not submit any further elements supporting its contentions as to the price levels remaining within a $\pm 10\%$ range throughout the EEA. It has, however, submitted evidence relating to market penetration rates for city buses, intercity buses and touring coaches. Consequently, the notifying party bases its definition of the relevant geographic market on the approach adopted by the Commission in its decision in the Renault/Iveco case, and on the non-price factors.

(233) The Commission agrees that the ability of manufacturers to price discriminate between different geographic areas is a central element of defining the relevant geographic market. There are indications that Volvo has been able to charge substantially different prices in various

Member States. Other elements such as customer preferences, technical requirements, purchasing habits, market shares and import penetration are relevant for the definition of relevant markets to the extent that they give indications about the ability of manufacturers to price discriminate. The Commission's investigation has shown that these elements support the finding of national geographic markets in the northern European areas where the impact of the concentration would be the strongest.

(234) The notifying party has in particular pointed out in its notification and reply that the decision in the Renault/Iveco case focused on the existing levels of import penetration when it defined the relevant geographic market for touring coaches as EEA-wide in scope. In that case, which the Commission approved without opening a second-phase investigation, the Commission considered that the level of import penetration of non-national manufacturers of touring coaches in France and Italy was relatively high on the market for touring coaches (between 65 % and 70 %). However, according to information submitted by Volvo, the level of import penetration in the United Kingdom (40 %) and Finland (10 %), which are the relevant Member States in the present case, is significantly lower. Taking into account the other elements analysed in more detail in the following recitals, these figures cannot be taken as a strong indication of an EEA-wide market.

(235) For the reasons set out in detail below, it follows from the market investigation that, as far as the Nordic region (Sweden, Finland, Norway and Denmark) and the United Kingdom and Ireland are concerned, Volvo's contention as regards the geographic market for city buses, intercity buses and touring coaches cannot be accepted. Instead, the market investigation has provided indications that the markets in question are still essentially national in scope. As regards the Finnish market, and in particular in view of some linguistic, cultural and historical factors, this was also the view presented by the Finnish Bus and Coach Association at the oral hearing.

(236) For the remaining Member States, the geographic scope of the market can be left open, as regardless of the definition adopted, the proposed concentration would not lead to the creation or strengthening of a dominant position. This will be further elaborated in the section dealing with the competitive analysis.

Touring coaches**Market shares vary significantly between Member States**

(237) Volvo's contention as to the existence of an EEA-wide market for touring coaches is not supported by the facts concerning its sales across that area, as indicated in the notification. It has been indicated that Volvo has a market share of [10 % to 20 %] in the EEA. Its market share is significantly higher in the Nordic countries, the United Kingdom and Ireland. At the same time, its

market shares in a number of countries is significantly below this EEA average ([0 % to 10 %] in Austria, [0 % to 10 %] in Belgium, [0 % to 10 %] in France, [0 % to 10 %] in Germany and [0 % to 10 %] in Spain). Similar national deviations from the average EEA market share can be observed for Scania and all other touring coach manufacturers. Apart from vague references to historical reasons, Volvo has not provided any explanation as to how, in its view, such differences in market shares between Member States could be compatible with its contention that the touring coach market is EEA-wide.

(238) The combined market share of Volvo and Scania for 1998 is set out in the table below.

| | City buses | Intercity buses | Touring coaches |
|----------------|-----------------|-----------------|-------------------------------|
| Sweden | [80 % to 90 %] | [80 % to 90 %] | [20 % to 30 %] |
| Finland | [90 % to 100 %] | [80 % to 90 %] | [80 % to 90 %] |
| Norway | [60 % to 70 %] | [80 % to 90 %] | [40 % to 50 %] |
| Denmark | [80 % to 90 %] | [70 % to 80 %] | [30 % to 40 %] |
| United Kingdom | [60 % to 70 %] | | [50 % to 60 %] |
| Ireland | [90 % to 100 %] | | [60 % to 70 %] ⁽¹⁾ |

⁽¹⁾ As explained below, the market investigation has shown that this figure is considerably lower than that submitted by Volvo.

Purchasing habits are not similar across Member States

(239) Furthermore, there are significant variations between Member States as concerns the purchasing behaviour of touring coach customers. The final user has two main possibilities of purchasing a touring coach. It can either buy a complete touring coach, or it can buy a chassis from, for example, Volvo and a touring coach body, that is to say, the complete passenger compartment, from a 'body-builder'. The latter case may, or may not, involve a contractual arrangement between Volvo and the body-builder. Measured at the EEA-level, Volvo achieves [40 % to 50 %] of its total sales from selling complete vehicles. The corresponding figure is [70 % to 80 %] for Scania. However, these figures vary significantly for individual Member States. For example, all of Volvo's touring coach sales in Sweden, Norway and Finland in 1998 were complete vehicles, as were a majority of Scania's sales. This is largely explained by the fact that both Volvo and Scania are vertically integrated with the main body-builders in the Nordic region. On the other hand, in Ireland and Greece all sales were limited to chassis

only, whereas in the United Kingdom approximately [80 % to 90 %] of all sales comprised chassis only.

(240) In addition, as stated in the notification, a particular feature of the demand structure in the United Kingdom and Ireland, when compared to all other Member States, is that there are no sales of intercity buses.

Purchasing is done on a national basis

(241) The national characteristics described above are consistent with the Commission's findings that buyers of touring coaches very rarely turn to dealers established outside their country. For this reason, a German manufacturer, for example, needs to have an established sales and distribution system in each of the Nordic countries and in the United Kingdom and Ireland, if it wants to achieve significant sales in the country in question. Consequently, as touring coaches are mainly imported into these countries by the respective manufacturer's national organisations, the competitive conditions, even in neighbouring countries, appear to have little or no impact on the selling conditions in any given country.

(242) One reason indicated by touring coach customers for their preference for making their purchases within their country of establishment is that this will provide them with more reliable access to servicing of the vehicle to the extent such service cannot be done in-house by the touring coach company. In that respect it must be emphasised that a significant proportion of the touring coach customers are small and medium-sized companies. For these customers, even the existence of significant price differences would not necessarily justify having to transport the vehicle to a foreign dealer for the necessary servicing and repairs. Another reason stated by customers against buying vehicles outside their country is the time, effort and cost involved in changing the registration of the vehicle. In addition, there is a risk that the secondhand value of a 'privately' imported vehicle is lower and/or that it may be more difficult to use as a 'trade-in' in future transactions with dealers in their own country. Contrary to what Volvo stated in its reply and at the oral hearing, a number of customers have also referred to the perceived quality of the vehicle and the availability of spare parts and servicing as essential criteria for a purchase decision. These criteria are strongly associated with the Volvo and Scania brands in the Member States assessed below.

Technical requirements and preferences vary between Member States

(243) In addition, the market investigation has revealed that, despite a certain degree of harmonisation achieved at the European level, a number of technical requirements and preferences that are pertinent to touring coaches and other bus types still vary across Member States⁽²⁵⁾. One such example is that the maximum permitted length of the vehicle is 12 metres in France, the Netherlands, Italy and Austria. Denmark has a maximum length limit of 13,7 metres, whereas Finland applies a 14,5 metre limit. Finally, Belgium, Sweden, Norway and Germany allow lengths up to 15 metres. Moreover, as concerns the United Kingdom and Ireland, the fact that all vehicles must be adapted for right-hand drive and that all doors need to be on the left-hand side of the vehicle, severely restricts the possibility of importing vehicles intended for Continental Europe. In 1998, the Office of Fair Trading concluded for similar reasons that

the United Kingdom constituted a relevant geographic market, separate from that of the rest of Europe⁽²⁶⁾.

(244) Finally, as concerns primarily Sweden, Finland and Norway, a number of customers have indicated that specific adaptations are needed for the vehicle to be suitable for the climate and road conditions, as well as to meet specific collision protection requirements concerning the front of the bus. Therefore, a number of customers have indicated that the models used in Continental Europe are less well-suited for use in the Nordic countries. In the reply, the notifying party disputes the conclusion that road and climatic conditions in Finland amount to a substantial barrier to entry. To support its view, Volvo refers to a specialised bus magazine that ranked Mercedes and Setra brands of DaimlerChrysler ahead of both Volvo and Scania in a test of buses of various manufacturers in arctic conditions. It should be noted that this article was published in a German magazine in 1993. Volvo has not submitted any evidence as to the authority of this particular article, nor has it even suggested that it is the only article in which such a test has been made over the last seven years. Consequently, the Commission can attach no value to this information.

(245) The notifying party contests, in its reply, the view of the Commission that the technical requirements vary between Member States to a significant extent and maintains that manufacturers are currently in a position to adapt their production to such differences. Leaving aside the technical capability of manufacturers to adapt their production processes, the costs related to such adaptation which, according to an estimation brought to the Commission's attention can amount to at least EUR 5 million, would have to be balanced against the attractiveness and size of the market in question.

Price levels differ significantly between Member States

(246) The fact that purchasing of touring coaches is done at a national level is furthermore reflected in the fact that significant price variations (excluding taxes) can be observed even between neighbouring countries. For example, according to the information contained in the notification, Volvo's price for the same touring coach model (a commonly sold model) is [10 % to 20 %] higher in Norway than in Denmark, [10 % to 20 %] higher in Finland than in Sweden and [20 % to 30 %] higher in the United Kingdom than in the Netherlands. Similar differences can be found in pricing information submitted by Scania and other touring coach manufacturers in the course of the market investigation. Volvo has acknowledged that, in general, a manufacturer's ability to price discriminate between customers in different Member States is an essential indication for a finding that the market is national in scope.

⁽²⁵⁾ Volvo in its reply refers to current discussion about further harmonisation concerning the length and width of buses and coaches used in international traffic. Volvo estimates that this further harmonisation will be in effect from 2002. Volvo has, however, not provided any evidence about the market impact of these new rules, should they be adopted according to the time schedule envisaged by Volvo.

⁽²⁶⁾ In the context of the examination of a merger between Henlys Group plc and Dennis Group plc.

- (247) Price differences between neighbouring countries, such as those indicated above, are generally incompatible with Volvo's contention that the Nordic countries (Sweden, Finland, Norway and Denmark), the United Kingdom and Ireland should not each be regarded as separate geographic markets. If the markets were indeed wider than national, it would be reasonable to assume that buyers of touring coaches would take advantage of the existing price differences and buy their vehicles in a neighbouring country.

Conclusion on relevant geographic market for touring coaches

- (248) In view of the foregoing, the Commission considers it appropriate to assess the competitive impact of the notified transaction on the market for touring coaches separately in Finland and the United Kingdom. For the other Member States the precise delineation of the relevant geographic markets can be left open, as the operation would not lead to the creation or strengthening of a dominant position.

City buses and intercity buses

- (249) The market investigation has shown that in the Nordic countries (Sweden, Finland, Norway and Denmark), and the United Kingdom and Ireland most of the elements described in relation to touring coaches also apply to city buses and intercity buses.

Market shares differ significantly between Member States

- (250) As in the case of touring coaches, Volvo's contention as to an EEA-wide market for city and intercity buses is not supported by the facts concerning its sales across that area, as stated in the notification. It has been indicated that Volvo's market share for city buses is [20 % to 30 %] in the EEA, whereas its EEA market share for intercity buses is stated to be [10 % to 20 %]. However, Volvo's market share is significantly higher in the Nordic countries (city and intercity buses), as well as in the United Kingdom and Ireland (city buses). At the same time, its market share in a number of countries is significantly below these EEA averages. For city buses, Volvo has a market share of between [0 % to 10 %] in Austria, Belgium, Germany, Italy and Luxembourg. For intercity buses, the company's market share is [0 % to 10 %] in Germany, Greece, Luxembourg and the Netherlands. This means, for instance, that Volvo's share of the city bus market in Denmark is [50 % to 60 %] while less than [0 % to 10 %] in Germany and [30 % to 40 %] in Sweden. In Ireland, Volvo has [60 % to 70 %] of the city bus market while Scania has [30 % to 40 %]. The equivalent figures for the United Kingdom are [50 % to 60 %] and [10 % to 20 %]. Similar, or even greater, national deviations from the average EEA market share

can be observed for Scania and all other manufacturers. Again, Volvo has not provided sufficient explanation as to how, in its view, such variations in market shares between Member States could be compatible with its contention that the city and intercity bus markets are EEA-wide.

Purchasing is done nationally and purchasing habits differ between Member States

- (251) Similar variations in the demand structure between Member States as those described for touring coaches also exist for city and intercity buses, in the sense that customers in certain countries prefer to buy a complete vehicle, whereas customers in other countries have a preference for buying the chassis and body separately.
- (252) Furthermore, the fact that buyers of touring coaches rarely turn to dealers established outside their country also applies to city and intercity buses. However, in this respect it is relevant to consider one significant difference between, on the one hand, the market for touring coaches and on the other, the markets for city and intercity buses. Whilst touring coaches are often sold through the manufacturer's dealers in each country, city and intercity buses are, to a significant extent, sold directly to the final customer by the manufacturer's national importer.
- (253) This means that, in theory, it should be comparatively less important for a 'foreign' supplier of city and intercity buses to have a well-established national network of dealers. Consequently, it would be reasonable to expect a higher penetration of 'foreign' suppliers of city and intercity buses. However, as indicated in the table in recital 237, 'foreign' manufacturers have been comparatively less successful in penetrating the Nordic countries, the United Kingdom and Ireland with their city and intercity buses (the combined market share of Volvo and Scania in these countries is [60 % to 70 %] to [90 % to 100 %]). It follows from this that there is no indication that this theoretical ability of 'foreign' manufacturers to sell city and intercity buses directly to the final customer of such vehicles has had any significant impact on the competitive situation in these countries.

- (254) The market investigation carried out by the Commission provides some indication of the reasons for this. First, public authorities play a comparatively greater role in the markets for city and intercity buses, as buyers and/or as the body responsible for issuing calls for tenders. The market investigation also indicates that these sales continue to be subject to detailed technical specifications that often go beyond the national legal requirements. In addition to intangible explanations, such as national

brand loyalty and language difficulties, purely economic reasons may also play a role. Among such economic reasons is the fact that transaction costs may be higher if contacts are to be established with suppliers in other countries. Some customers have pointed out that these vehicles are generally sold with certain warranties and/or service contracts. Customers have expressed concerns that they would not necessarily be provided with the same level of aftersales service in their country of incorporation, even if they had bought the vehicle from the same manufacturer, but in another country. In addition, to the extent that the buyer operates its own service and repair shop (for routine servicing and repairs), the costs related to keeping a stock of spare parts and brand-specific tools will, to a certain extent, act as a disincentive to take on additional brands. Finally, for the same reasons as indicated for touring coaches, the purchase of city and intercity buses in another country is likely to increase the risk and cost associated with changing the registration of the vehicle and securing its secondhand value.

Technical requirements vary between Member States

(255) The same variation in length restrictions as has been described for touring coaches also applies to city and intercity buses. The same is true for the specifications relating to right-hand drive in the United Kingdom and Ireland⁽²⁷⁾. In addition, it is recalled that there is no market for intercity buses in these two countries. In the course of the market investigation, third parties have submitted that, for the Nordic markets, low entry, rather than low floor, is generally demanded for city buses, and that there is also a specific Nordic demand for ethanol-powered buses. Manufacturers, which have not traditionally focused on sales in the Nordic region, face therefore additional costs in the same way as previously described for touring coaches.

(256) As already indicated, these vehicles are normally bought by public or private operators in charge of public transport services. It has been brought to the Commission's attention that public authorities in charge of public transport continue to influence demand conditions, even where privatisation of such services has taken place, by specifying detailed requirements as to the vehicle specifications in the request for competitive tenders. One such example is the request for ethanol-powered buses. Therefore, such additional non-

regulatory technical requirements will be of significant importance to any bus service operator that wishes to participate in a tendering procedure.

Price levels differ significantly across Member States

(257) As in the case of touring coaches, the fact that purchasing of city and intercity buses is done on a national level is reflected in significant price variations (excluding taxes), including between neighbouring countries. For example, according to information submitted by Volvo, its prices for a similar city and intercity bus model are respectively [10 % to 20 %] and [10 % to 20 %] higher in Sweden than in Norway. At the same time, the prices in Finland are respectively [0 % to 10 %] and [20 % to 30 %] higher, than the corresponding prices in Denmark. Its price for a city bus in the United Kingdom is [20 % to 30 %] higher than in Norway. Again, similar price differences can be found in information submitted by Scania and other city and intercity bus manufacturers. Finally, internal documents of Volvo submitted to the Commission also indicate price differences between other neighbouring Member States. According to this information, the market price for a two-axle low-floor city bus is [20 % to 30 %] higher in the Netherlands than in Belgium and the price for an articulated low-floor city bus, [10 % to 20 %] higher in Italy than in Austria in 1999.

(258) Price differences between neighbouring countries, such as those indicated above, are generally incompatible with Volvo's contention that the Nordic countries (Sweden, Finland, Norway and Denmark) and the United Kingdom and Ireland should not each be regarded as separate geographic markets. If the markets were indeed wider than national, it would be reasonable to assume that buyers of city and intercity buses would take advantage of the existing price differences and buy their vehicles in a neighbouring country.

Conclusion on relevant geographic market for city and intercity buses

(259) For these reasons, the Commission considers it appropriate to assess the competitive impact of the notified transaction on the markets for city and intercity buses separately in each of the Nordic countries (Sweden, Finland, Norway and Denmark) and Ireland.

C. ASSESSMENT

(260) Prior to assessing the individual market for city and intercity buses and touring coaches in the above-mentioned Member States, two specific issues raised by Volvo in its reply and at the oral hearing need to be addressed, namely the results of the Commission's market investigation and the issue of shrinkage.

⁽²⁷⁾ In 1998, the Office of Fair Trading concluded in the context of the examination of a merger between Henlys Group plc and Dennis Group plc that the United Kingdom constituted a relevant geographic market, separate from that of the rest of Europe, including Ireland.

Customer response

(261) As to the results of the Commission's market investigation on the markets for buses and coaches, Volvo has argued in its reply and at the oral hearing that customers do not display an undue level of concern about the proposed concentration. The Commission has considered this remark carefully and has come to the conclusion that it is not supported by the facts available. As previously stated for the market in heavy trucks, when assessing Volvo's argument that customers are not concerned, it is first necessary to keep in mind that, despite a certain degree of consolidation that has occurred in the past decade, as also submitted by the notifying party in its notification and reply, that the bus industry also has a fragmented customer structure, in particular as concerns touring coaches.

(262) Moreover, for the same reasons as stated in relation to heavy trucks, the relevant question is not, as implied by Volvo, the number of 'complaints' that have been submitted. Instead, a qualitative analysis must be made of all the available information, including the comments provided by third parties. When, as in this case, the proposed concentration would lead to extremely high market shares for the combined entity, the fact that even some of the largest customers indicate, *inter alia*, that the parties will become dominant, must be seen as significant. The Commission is therefore unable to accept Volvo's argument that no concerns exist.

(263) As regards the GfK survey conducted on behalf of Volvo for its reply, it must be noted that the survey was carried out by telephone with a sample of Volvo's and Scania's bus and coach customers in each of the four Nordic countries, the United Kingdom and Ireland. The customer list was provided by Volvo. Even if the survey could give some indications of the characteristics and reactions of the customers, it fails to identify which are the coach, intercity and city bus customers. Therefore, it is not possible to draw the necessary detailed conclusions as regards the behaviour of each of these customer groups.

Shrinkage effect

(264) Volvo has put forward the shrinkage effect, which is related to customers' 'multiple sourcing' policy. However, as regards the markets for city and intercity buses and touring coaches, Volvo has not been able to establish that there will be market share losses, which would significantly change the competitive situation on these markets. Volvo has not provided any data to support its claims of a significant shrinkage effect in these markets. Instead it refers to the Commission's decision in the Mercedes-Benz/Kässbohrer case, which mainly concerned the German markets for city buses, intercity buses and touring coaches.

(265) In that case the Commission considered the markets to be national in scope. In its assessment it took account of structural elements which were likely to alter the conditions of competition and which would justify a more dynamic interpretation of the significance of the market share of the merged parties. It was concluded that such structural factors could, for example, include the ability of actual competitors to constrain the actions of the new entity, the expectation of a significant increase in potential competition from powerful competitors, the possibility of a quick market entry or the buying power of important customers. In particular, the Commission considered the issue of expected substantial actual and potential competition and the effect of public procurement procedures. The Commission noted in that case, that the small number of imports into the German market in the past was due not only to intangible barriers to market entry, including customer-supplier relationships and brand loyalty, but also to the fact that foreign suppliers' products were not properly tailored to the German market. The Commission concluded that the potential competition together with the already existing competition was sufficient to limit the merged entity's freedom of manoeuvre on the German market, because the tangible entry barriers could be overcome and the intangible barriers were expected to lose significance.

(266) The Commission notes, however, that there are significant differences between the circumstances in these two cases meaning that direct parallels cannot be drawn. First, in terms of market size, Germany is by far the most important bus market in Europe and bus manufacturers have a strategic interest in entering that market. Secondly, following the concentration, two further significant domestic bus and coach manufacturers, namely MAN and Neoplan, remained on the market in addition to foreign manufacturers, like Bova. This is not the situation in the present case.

(267) However, even if one were to accept the possibility of a certain shrinkage effect after the planned merger of Volvo and Scania, the evidence from the Mercedes/Kässbohrer merger shows that the market share loss over four years was actually only 3 % to 5 %, according to Volvo's own submission, and that the market share loss took longer to materialise than was expected at the time of the merger.

(268) In its reply, Volvo asserts that the experience of the Swedish coach market, where its market share dropped drastically in 1998, should be taken as evidence that all bus markets are contestable and therefore Volvo's and Scania's combined high market shares should not be a cause for concern. However, Volvo has not been able to explain the exact reason why its market share decreased

in the Swedish coach market. Nor has it explained the reason why this experience should be expected to be transposed to other relevant coach markets. Therefore, while recognising that these markets are not entirely sealed off from competition, and therefore could be subject to change, the Commission does not consider that the available evidence allows it to disregard the extremely high and stable market shares in other relevant markets. In particular, the Commission considers that the loss of market share on the Swedish coach market may be due to specific factors, such as the change of ownership of some of the main Swedish players on this market. Indeed, some of the main players in the Swedish touring coach market have recently been taken over by companies, such as Vivendi, which given their

international presence are more likely to buy foreign brands.

Touring coaches

- (269) Both Volvo and Scania have a significant presence across most Member States. However, in Austria, Belgium, France, Germany and Luxembourg their combined market shares were less than 15 % in 1998. Consequently, it is not necessary to consider these markets for the purposes of the assessment of the notified operation. The market shares of Volvo and Scania in the remaining Member States (and Norway) are set out in the table below.

| | Volvo | Scania | Largest competitor |
|--------------------|----------------|----------------|--------------------|
| Denmark | [10 % to 20 %] | [10 % to 20 %] | > 25 % |
| Finland | [60 % to 70 %] | [20 % to 30 %] | < 10 % |
| Greece | [20 % to 30 %] | [60 % to 70 %] | [...] |
| Ireland | [30 % to 30 %] | [30 % to 40 %] | [...] |
| Italy | [10 % to 20 %] | [0 % to 10 %] | > 40 % |
| The Netherlands | [10 % to 20 %] | [10 % to 20 %] | < 30 % |
| Norway | [20 % to 30 %] | [10 % to 20 %] | > 30 % |
| Portugal | [10 % to 20 %] | [10 % to 20 %] | > 25 % |
| Spain | [0 % to 10 %] | [30 % to 40 %] | > 25 % |
| Sweden | [0 % to 10 %] | [20 % to 30 %] | > 30 % |
| The United Kingdom | [40 % to 50 %] | [10 % to 20 %] | > 10 % |
| Total EEA | [10 % to 20 %] | [10 % to 20 %] | > 30 % |

- (270) As can be seen from the table in recital 269, the merged entity would remain subject to competition from at least one other supplier with similar or greater market share in Italy, the Netherlands, Spain and Sweden. Consequently, there is no risk that the proposed concentration will create or strengthen a dominant position in those markets. In Denmark, Norway and Portugal, the parties' combined market share is between [30 % to 40 %]. However, in each of those countries the combined

entity would remain subject to competition from, at least, one supplier with a market share exceeding 25 %. Furthermore, the parties' combined market shares in these three countries have been subject to significant fluctuations over the last three years. Against that background, the information available to the Commission does not indicate that the proposed concentration could lead to the creation or strengthening of a dominant position in Denmark, Norway or Portugal.

(271) According to the figures provided by Volvo, the parties would achieve very large market shares in Greece and Ireland. It is, however, to be noted that the market for touring coaches in both of these countries is very limited in size (a total of 16 and 15 registrations in 1998 respectively). This means that the market share calculation for these countries is particularly sensitive to the general difficulty that official registrations in most Member States⁽²⁸⁾ do not differentiate between city buses, intercity buses and coaches. In the course of the Commission's investigation, information provided by third parties made it necessary to revise the market share information for Greece and Ireland submitted by Volvo. When taking this third-party information into consideration, it follows that the combined market share of Volvo and Scania is significantly lower than indicated in the table in recital 269, and, in fact, that in both Member States the combined sales of Volvo and Scania in 1998 were lower than those of at least one other manufacturer. It follows from this that the information available to the Commission does not support a finding that the proposed concentration could lead to the creation or strengthening of a dominant position in Greece or Ireland.

(272) There are, however, two countries where the proposed concentration would have a serious impact on competition; Finland and the United Kingdom. Each of these two markets will be analysed in detail.

A dominant position would be created on the Finnish market for touring coaches

Market size and market shares

(273) The Finnish coach market is relatively small in volume, with annual sales of between 80 and 100 units. As indicated in the table above, the parties' combined share of that market was [80 % to 90 %] in 1998. Their combined share has been very stable at that high level [80 % to 90 %] in 1996, [80 % to 90 %] in 1997. Even if measured over a 10-year period (1989 to 1998) the combined share is [80 % to 90 %]. Although the market share distribution between Volvo and Scania has also been relatively stable over this period, with Volvo generally having [50 % to 60 %] of the market and Scania having [30 % to 40 %], there was a change in this trend in 1998. In that year, Volvo increased its market share to [60 % to 70 %], whereas Scania's market share fell to [20 % to 30 %]. The development of the parties' market shares shows that gains by Scania have resulted in losses for Volvo and vice versa. These figures therefore confirm the statements by third parties to the effect that Scania has competed with Volvo for the same customers.

(274) There are no other suppliers that have had any significant sales of touring coaches in Finland over the last 10 years. In the notification, Volvo nevertheless submitted that DaimlerChrysler is a serious challenger. Volvo's contention cannot, however, be accepted, given that the sales of DaimlerChrysler have remained stable at a level representing less than 5 % of the market. The same is true for all other manufacturers.

Demand characteristics

(275) It is a feature of the Finnish market (touring coaches and other buses) that customers have, historically, often bought the vehicle chassis and body separately. In that respect, third parties have submitted that the purchasing of chassis and body separately can have two main advantages. First, body-builders are traditionally active on a national basis and, as such, are well-placed to produce a body that will satisfy local requirements, which tend to relate more to the body than the chassis. Secondly, this type of separate purchasing has traditionally been a way to reduce the chassis manufacturer's leverage in negotiations. In this respect, third parties have stated that Volvo's market position was strengthened by its acquisition, in 1998, of the largest Finnish body-builder, Carrus. Also, the Finnish Bus and Coach Association, acting as a third party at the oral hearing, stated that Volvo has a 75 % share of the body-building production in terms of volume through the Volvo-owned Carrus factories in Finland. This would be consistent with the observation that Volvo's market share increased significantly from 1997 to 1998. This ability to significantly strengthen its market position, demonstrated following the acquisition of Carrus, also significantly reduces the credibility of Volvo's argument that, despite an important structural change in the market, Finnish touring coach customers will 'support' a second manufacturer in order to maintain the possibility of dual-sourcing. In fact, Volvo's increase in market share suggests that these customers will favour the manufacturer with the strategically strongest market position.

(276) On the customer side, it is to be noted that 83 % of all Finnish bus companies have 20 vehicles or less (with 37 % having a fleet of 1 to 5 buses, 28 % a fleet of 6 to 10 buses and 18 % a fleet of 11 to 20 buses). The number of small customers is particularly high among the touring coach customers. The market investigation has confirmed that, for this type of small bus company, there are significant advantages in concentrating purchases in one single supplier, as this reduces the cost and complexity of maintaining multiple contacts with suppliers, spare parts logistics and stockholding, training of drivers and mechanics, etc. The market investigation has also confirmed that these customers are only to a limited extent in a position to buy touring coaches from suppliers located outside Finland. This was also the view presented by the Finnish Bus and Coach Association at the oral hearing. As already indicated, this has enabled Volvo and Scania to maintain significantly higher prices in Finland than, for example, in neighbouring Sweden.

⁽²⁸⁾ According to the notification, the United Kingdom is the only Member State to differentiate registrations into two classes: city buses and touring coaches.

Barriers to entry and potential competition

- (277) As there is a certain degree of commonality between the service network used for touring coaches and other types of bus and heavy trucks, it is important to note that Volvo and Scania also have similarly high market shares for city and intercity buses (see recital 291) and heavy trucks in Finland. The fact that most touring coach customers are small private companies means that they may rely on their supplier for more complex repairs and maintenance of their vehicles. This explains why customers of touring coaches in Finland would generally find it more difficult to source their touring coaches from DaimlerChrysler or any of the other manufacturers that do not have a service network comparable to that of the parties. A number of customers have also indicated that other manufacturers' prices for service and spare parts can be substantially higher than Volvo's and Scania's, and that other manufacturers have less well developed logistic systems, which lead to longer delivery times for spare parts. These views reflect the importance of a well-established service network also in respect of touring coaches.
- (278) Volvo and Scania currently have 31 and 34 service points respectively in Finland, all of which, according to Volvo, are suitable for servicing both heavy trucks and all types of bus. In its reply, the notifying party submitted further information on the number of competitors' service points. According to this information, the number of service points of the competitors would be significantly lower than that of the merged entity. Renault has 45 service points, DaimlerChrysler 34 and MAN 25. It can therefore be concluded that the merged entity's competitors would have less dense service networks in Finland. In its reply, Volvo contests the importance of a dense service network for city, intercity bus and coach customers by reference to the high proportion of in-house servicing done by bus and coach customers; as an example it mentions Göteborg City bus company. Volvo also claims that customers can use the service networks of competitors as well as independent service points as a source of service and repair. Whilst it is true that a number of customers are able to service and repair their vehicles in-house, in view of the relatively small size of touring coach companies and the need for more complex repairs, the value of effective aftersales service should not be underestimated, in particular in relation to small companies. As already mentioned, service offered by the manufacturer is also an element perceived by customers as closely related to brand image. However, apart from the amount of the investment required for a dense service network, it has been reported to the Commission that the establishment of a competitive service network in Finland (and the other Nordic countries) is relatively more expensive than in other parts of the EEA, owing to the combination of
- high wages, large areas, small total vehicle population and the existing position of Volvo and Scania.
- (279) It follows from the foregoing that, prior to the concentration, Scania has been the only real source of competitive pressure that Volvo has had to face on the Finnish market. This source of competition would be removed by the proposed concentration. The market investigation indicates that Volvo, following implementation of the concentration, would be able to raise its prices significantly, and that the small bus companies, which are the main group of buyers of touring coaches, would not be able to restrain the merged entity's behaviour on the market. The notified transaction would thus create a dominant position on the Finnish market for touring coaches.
- (280) Volvo has suggested that there are no barriers to entry, and that, consequently, it would be subject to effective potential competition from all other European manufacturers, which would obtain improved opportunities to increase their presence on the market following the concentration. However, as already noted, there are a number of technical characteristics that make touring coaches intended for Continental Europe less suitable for the Finnish market and adaptations for climate and road conditions, length of vehicle, etc. are thus necessary. Third parties have submitted that the cost involved in adapting their existing coach models to the Finnish market would be significant. Furthermore, in order to become a significant competitive force in the market, the other manufacturers would need to invest in the reinforcement or establishment of a service network, comparable to that of Volvo and Scania. The market investigation has also shown that other suppliers regard the limited size of the Finnish market as a barrier to effective entry, in the sense that it may be difficult to recoup the necessary investments within a reasonable time-frame. Consequently, it has to be concluded that Volvo has not sufficiently shown that, following the implementation of the proposed concentration, it would be subject to such potential competition as to significantly restrain it from exercising the increased market power gained through the acquisition of Scania.
- Conclusion on the Finnish market for touring coaches*
- (281) For all of these reasons the notified transaction would create a dominant position on the Finnish market for touring coaches.

A dominant position would be created on the United Kingdom market for touring coaches

Market size and market shares

(282) In terms of volume, the coach market in the United Kingdom is the second largest in Europe (after Germany). In 1998, 1 320 touring coaches were sold in the United Kingdom. The parties' combined share of that market was 52 % in 1998, with Volvo having 42 % and Scania 10 %. The combined market share of the parties was 57 % in 1996 and 59 % in 1997. Also, when measured over a 10-year period (1989 to 1998), the combined share was 57 %. As in the case of Finland, Volvo has, throughout this period, been the competitor with the stronger position with a market share of between 42 % and 50 %, whereas Scania has been stable at approximately 10 %. It appears that one of the main reasons for Volvo's consistently strong position in the United Kingdom is its acquisition of the United Kingdom company Leyland Buses. However, the market investigation indicates that, despite its lower market share, Scania has been one of the main sources of competition for Volvo, that the two companies have generally competed for the same customers, and that Scania's vehicles are considered by many customers to be their preferred substitute for Volvo's touring coaches. Internal Volvo data confirm that Volvo and Scania are considered by their United Kingdom coach customers to be close substitutes in terms of quality, safety and environmental impact.

(283) Apart from Volvo and Scania, the supply-side of the touring coach market is very fragmented in the United Kingdom, with all other manufacturers (Daimler-Chrysler, MAN, DAF Bus, Van Hool and Dennis) having market shares of around 10 %.

Demand characteristics

(284) As in the case of the Finnish market, touring coach customers in the United Kingdom often buy the vehicle chassis and body separately (80 % of Volvo's sales have been stated to involve chassis only). In that respect, third parties have submitted that Volvo's market position is strengthened by its indirect ownership of one of the most important body-builders in the United Kingdom, Plaxton. Furthermore, third parties have projected that this type of vertical integration will gain more importance over the coming years and submitted that Scania, which only sells complete touring coaches in the United Kingdom, is an example of this trend.

(285) On the customer side, Volvo has cited the United Kingdom as an example of a completely privatised market with sophisticated and powerful private bus operators. It has submitted that the five largest bus operators account for about [60 % to 70 %] of demand. The degree of customer dispersion is, however, higher on the coach market than on the city bus market. This is consistent with the fact that the economies of scale that can be found in operating a significant number of scheduled public bus services are less evident in the

excursion and tourism sector, which is the main field of use for touring coaches. Thus, the number of small customers is higher among the users of touring coaches, and for this type of small bus company, the same advantages apply in concentrating purchases in one single supplier, as already described for Finland (reducing the cost and complexity of maintaining multiple contacts with supplier, spare parts logistics and stockholding, training of drivers and mechanics, etc.). Again, the market investigation has confirmed that these customers are not in a realistic position to buy touring coaches from suppliers located outside the United Kingdom. This has enabled Volvo and Scania to maintain significantly higher prices in the United Kingdom than, for example, in the neighbouring Netherlands.

Actual and potential competition

(286) Volvo and Scania also have high market shares for city buses (see recital 291) and would become the market leader in heavy trucks in the United Kingdom. As explained above in relation to Finland, the existing commonality between the service network for all these vehicles and the fact that many touring coach customers are dependent on their supplier for repairs and maintenance creates a lock-in effect. This is consistent with a finding that touring coach customers generally display a high degree of brand loyalty. Volvo has 94 service points and Scania 80 in the United Kingdom. At present, the main competitors have a similar network of service points. Iveco has 119 service points and Daimler-Chrysler 82.

(287) Following the proposed concentration, Volvo would be in a considerably stronger position to take advantage of this brand loyalty. For example, if, it had attempted to raise its prices in the pre-merger situation, it would have had to balance the potential gains from this against the risk that a number of its customers would switch to other manufacturers. Given the market perception that Scania is a close substitute for Volvo, it would, in that exercise, have had to consider there to be a high risk that customers would switch to Scania. Following the implementation of the proposed concentration, such a customer response would, from a revenue viewpoint, become neutral to Volvo. Consequently, the proposed operation would, as a direct result, reduce the risk to Volvo of exercising its market power.

(288) In addition to the effect of neutralising potential customer response (as far as Scania is concerned) to a price increase, the concentration would also have the effect of strengthening Volvo's market leadership. Given that the proposed transaction would increase Volvo's share of the United Kingdom touring coach market to over 50 %, it would also be likely to result in other suppliers (none of whom have a market share above 10 %) becoming increasingly likely to accept Volvo's price leadership. Consequently, the transaction would also reduce the risk of an aggressive response from the smaller suppliers, if Volvo were, for example, to increase its touring coach prices.

(289) It follows from the foregoing that, prior to the concentration, Scania has been a main source of competitive pressure for Volvo on the United Kingdom market. This source of competition would be removed by the proposed concentration, in a way that would significantly strengthen Volvo's ability to exercise its market power. Moreover, it is unlikely that the small bus companies, which are the main buyers of touring coaches, would be able to restrain the merged entity's behaviour on the market.

Conclusion on the United Kingdom market for touring coaches

(290) For all of these reasons, it is concluded that the notified transaction would create a dominant position on the United Kingdom market for touring coaches.

City and intercity buses

(291) Both Volvo and Scania have significant activities in these markets across most Member States. However, for city buses, their combined market shares in Austria, Belgium, France, Germany, Italy, Luxembourg and Spain were less than [10 % to 20 %] in 1998. For intercity buses, the parties had less than [10 % to 20 %] market share in all of these Member States, as well as in the Netherlands. Consequently, it is not necessary to consider these markets for the purposes of the assessment of the notified operation. The market shares of Volvo and Scania in the remaining Member States (and Norway) are set out in the table below.

| | City buses | | | Intercity buses | | |
|----------------|----------------|----------------|--------------------|-----------------|----------------|--------------------|
| | Volvo | Scania | Largest competitor | Volvo | Scania | Largest competitor |
| Denmark | [50 % to 60 %] | [20 % to 30 %] | < 20 % | [50 % to 60 %] | [20 % to 30 %] | < 20 % |
| Finland | [70 % to 80 %] | [20 % to 30 %] | < 10 % | [60 % to 70 %] | [20 % to 30 %] | < 10 % |
| Greece | [10 % to 20 %] | [30 % to 40 %] | < 30 % | [0 % to 10 %] | [40 % to 50 %] | < 30 % |
| Ireland | [60 % to 70 %] | [30 % to 40 %] | < 10 % | NA | NA | |
| Netherlands | [10 % to 20 %] | [0 % to 10 %] | < 30 % | [0 % to 10 %] | [0 % to 10 %] | < 30 % |
| Norway | [40 % to 50 %] | [10 % to 20 %] | < 20 % | [60 % to 70 %] | [10 % to 20 %] | < 20 % |
| Portugal | [10 % to 20 %] | [0 % to 10 %] | < 30 % | [10 % to 20 %] | [10 % to 20 %] | < 20 % |
| Sweden | [30 % to 40 %] | [40 % to 50 %] | < 10 % | [50 % to 60 %] | [20 % to 30 %] | < 10 % |
| United Kingdom | [50 % to 60 %] | [10 % to 20 %] | < 20 % | NA | NA | |
| Total EEA | [20 % to 30 %] | [0 % to 10 %] | | [10 % to 20 %] | [0 % to 10 %] | |

(292) As can be seen from the table in recital 291, the merged entity would, on both product markets, remain subject to competition from at least one other supplier with similar or greater market share in the Netherlands and Portugal. Consequently, there is no risk that the proposed concentration would create or strengthen a dominant position in those markets.

(293) The situation is also particular in relation to the United Kingdom and Greece, in both of which, according to the figures provided by Volvo, the parties would achieve

significant combined market shares. Volvo has submitted that the parties' combined market share for city buses in the United Kingdom decreased dramatically in 1999, with Volvo's market share dropping to 18 %. It follows that the information available to the Commission does not support a finding that the proposed concentration could lead to the creation or strengthening of a dominant position in the United Kingdom.

(294) The situation in Greece also requires specific attention. The total size of the Greek markets for city and intercity

buses is very small (respectively approximately 100 and 20 vehicles in 1998). The public transport operators in Athens and Thessaloniki are the main buyers of such vehicles in Greece. Both of these operators purchase city and intercity buses through public tenders. This has the effect that market shares in Greece are extremely volatile. In the period between 1996 and 1998, Volvo's market share for city buses in Greece was [20 % to 30 %], [60 % to 70 %] and [10 % to 20 %], whereas Scania's market share for the same years was [10 % to 20 %], [30 % to 40 %] and [30 % to 40 %]. The market share of the largest competitor, DaimlerChrysler, was [60 % to 70 %], [0 % to 10 %] and [40 % to 50 %] over the same period. Under such circumstances, the Commission is of the opinion that the proposed concentration would not lead to the creation or strengthening of a dominant position in the Greek markets for city and intercity buses.

- (295) There are, however, five countries where the proposed concentration would have a serious impact on competition: Sweden, Finland, Norway, Denmark and Ireland. As the markets for city and intercity buses in the first four countries have a number of similarities, the assessment will provide a detailed description of the markets in one of these countries (Sweden). Following this, the assessment of the other three Nordic countries will be made largely by reference to the first assessment and focus on existing national differences. Finally, the Irish market will be assessed.
- (296) A common feature of all four Nordic countries is that both Volvo and Scania are the traditional suppliers in the whole area and have traditionally enjoyed very strong market positions for both city and intercity buses. The market investigation also strongly supports a finding that Volvo and Scania have been each other's main competitor in each of the Nordic countries for a number of years. Therefore, the proposed operation would lead to the elimination of Volvo's main competitor in these markets.

Dominant positions would be created on the Swedish markets for city and intercity buses

Market size and market shares

- (297) In 1998, the volume of the Swedish markets was 289 city buses and 411 intercity buses. For city buses, the parties' combined market share was [80 % to 90 %] in 1998, with Volvo having [30 % to 40 %] and Scania [40 % to 50 %]. The corresponding figure for intercity buses was [80 % to 90 %] (combined), with Volvo contributing [60 % to 70 %] and Scania [20 % to 30 %]. For city buses, Volvo's market share was [40 % to 50 %] in 1997 and [40 % to 50 %] in 1996 (the corresponding figures for Scania were [30 % to 40 %] in 1997 and [30 % to 40 %] in 1996). For intercity buses, Volvo's

market share was [70 % to 80 %] in 1997 and [60 % to 70 %] in 1996 (the corresponding figures for Scania were [20 % to 30 %] in 1997 and [30 % to 40 %] in 1996). Thus, although there has been some variation in the parties' market shares over the last three years, the figures provided by Volvo clearly indicate that this fluctuation of market share has mainly been between the two parties. Also when measured over a 10-year period (1989 to 1998) the combined share is [80 % to 90 %] (city buses) and [90 % to 100 %] (intercity buses). Thus, the available evidence indicates that both Volvo and Scania have been able to maintain consistently high market shares, and that they have been each other's main source of competition in both markets. The market investigation also indicates that customers in Sweden generally consider Volvo and Scania to be the closest substitutes in the markets for city and intercity buses. This is further confirmed by internal data submitted by Volvo.

- (298) It follows from the very high combined market shares of Volvo and Scania, that all other suppliers (DaimlerChrysler, Neoplan and Bova) have weak market positions, ranging from 2 % to 10 %. Consequently, the merged entity would have a market share about eight times higher than that of its closest competitor. This is a significant difference to the pre-merger situation, where Volvo faced competition from a company, Scania, that had a comparable market share for city buses, as well as significant sales of intercity buses. In addition, whereas Sweden has been a core market for Scania, there is no evidence that is the case for any of the other manufacturers. This is important, as customers tend to attribute significant importance to the track-record and commitment of the manufacturer to 'their' market. It follows that the merged entity would clearly become the market leader in Sweden. As such, it would be in a significantly better position to spread the costs related to specific national measures (such as development of service networks, maintaining contacts with customers and public authorities and other promotional campaigns, etc.) than any of its remaining, weaker competitors.

Demand characteristics

- (299) The Swedish city and intercity bus operators have been almost completely privatised. Volvo has submitted that three operators, Swebus, Linjebuss and Busslink account for [60 % to 70 %] of the total Swedish demand for city and intercity buses, and that these companies exercise significant buying power. Volvo has also given a number of examples of what it considers to be 'significant contract losses' over the last three years to these larger buyers. The Commission recognises that privatisation and consolidation among Swedish bus operators are likely to have provided these larger entities with a comparatively better bargaining position than that pre-

viously held by the smaller and mainly publicly owned local operators. This, however, does not constitute evidence that, despite the significant overlaps created, the proposed concentration would not increase Volvo's market power. Instead, the relevant question is whether Swedish customers would have the ability to significantly restrain the combined entity's future market behaviour. A common characteristic for all New Volvo's bus customers is that they buy a very high proportion of their total requirements from Volvo and Scania (up to 100 %). Each customer would therefore be significantly more dependent on New Volvo than vice versa. Therefore, based on their purchases, there is insufficient evidence that the Swedish customers will have sufficient buying power to restrain New Volvo's market behaviour.

(300) It should also be noted that most of the Swedish city and intercity bus operators have already been privatised for a considerable period of time (up to 10 years). However, as can be seen from the above market shares, Volvo and Scania have in fact been able to retain very high and relatively stable market shares over the last years. Against this background, it must be concluded that the modest market share increases by DaimlerChrysler, Neoplan and Bova over the period since liberalisation of the Swedish bus markets cannot be taken as support for Volvo's contention relating to 'significant contract losses'. Furthermore, it has already been shown that fluctuations in market shares have primarily been between the parties. It therefore appears that even large Swedish buyers of city and intercity buses have a strong preference for the Volvo and Scania products. The market investigation indicates that most customers are not very price sensitive. This is consistent with a customer survey for city buses conducted by Volvo in 1996/97, which concluded that the purchase price was less important than factors such as local service network, reliability and lifetime costs. Volvo's contention as to the likelihood of New Volvo's customers reducing their purchases from New Volvo in response to the merger has already been analysed in relation to the shrinkage effect.

(301) Secondly, it should be noted that even if the Swedish bus operator market is relatively concentrated, there are still a significant number of small-sized bus operators. These smaller customers are in a number of aspects in a similar position to that of the touring coach customers, which means that they will normally have a preference for concentrating their purchases in one single supplier (for reasons such as reducing the cost and complexity of maintaining multiple contacts with suppliers, spare parts logistics and stockholding, training of drivers and mechanics, etc.). In addition, smaller city and intercity bus customers are normally more dependent on their supplier for aftersales services. For these reasons, these smaller customers will have little or no ability to withstand attempts by the merged entity to use its increased market power after the concentration.

(302) In conclusion, Volvo has not been able to demonstrate that the existing level of buying power of the city and intercity bus operators in Sweden would be sufficient to negate the merged entity's ability to take advantage of the increased market power that it would gain from the proposed concentration.

Barriers to entry and potential competition

(303) In Sweden, Volvo and Scania also have high market shares for heavy trucks and, to a lesser extent, touring coaches (see table in recital 269). Therefore, to the extent that city and intercity bus customers require aftersales services from the manufacturer, the existing commonality between the service network for all vehicles creates a lock-in effect among existing customers, who consequently can be expected to display a significant degree of brand loyalty. The widespread nature of the Volvo and Scania service network in Sweden will therefore act as an additional barrier to entry for other manufacturers of city and intercity buses. For the reasons indicated in relation to the Finnish market for touring coaches, the market investigation also indicates that the comparatively high costs of establishment, in particular as concerns the sales and aftersales organisation, combined with the limited size, and therefore attractiveness, of the Swedish markets is another important barrier to significant entry.

(304) Volvo and Scania currently have 116 and 105 service points respectively in Sweden. All competitors have significantly fewer service points in Sweden, with the largest competing service network having less than one third as many points of presence as that of the merged entity. Consequently, the merged entity's competitors would be at an additional disadvantage, in terms of being able to offer a comprehensive service network. Finally, the same cost-related restraints to increase the capillarity of the service network as described for Finland also apply in Sweden.

(305) Volvo has submitted that its customers generally have a dual-sourcing policy, and that customers who have so far bought from Volvo and Scania are likely to look for alternative suppliers following the concentration. In its view, this is likely to lead to a reduction of the merged entity's market share in Sweden, to the benefit of other manufacturers. Volvo has also suggested that it would be at a competitive disadvantage compared to other manufacturers, which, according to Volvo, are more advanced in providing [certain types of] buses. This argument has not been confirmed by the market investigation, and must therefore be disregarded. As to Volvo's argument relating to 'shrinkage', this has already been analysed. However, it is to be noted that the board documents and other reports relied on by Volvo to demonstrate this 'shrinkage' effect are largely focused on

heavy trucks, and that most of these documents contain no specific analysis of the development of the city and intercity bus markets. Therefore, in addition to the Commission's arguments set out in relation to heavy trucks, it must be concluded that Volvo's contention as to the likelihood of significant 'shrinkage' in the sales of city and intercity buses is only an estimation without any firm foundation and as such cannot be given such value as to remove the concerns following from the combination of the two main competitors in the market.

(306) On the contrary, it must be concluded that Volvo, following the proposed concentration, would be in a considerably stronger position to utilise its market power. For example, if, in the pre-merger situation, it had attempted to raise its prices, it would have had to balance the potential gains from this against the risk that a number of its customers would switch to other manufacturers. Given the established position of Scania, combined with the market perception that Scania is the closest substitute to Volvo, as confirmed by internal Volvo data, it would, in so doing, have had to consider the particularly high risk that customers would switch to Scania. Following the implementation of the proposed concentration, such a customer response would, from a revenue viewpoint, become neutral to Volvo. Consequently, the proposed operation would, as a direct result, reduce Volvo's risk in exercising its market power.

(307) In addition to the effect of neutralising potential customer reaction (as far as Scania is concerned) to a price increase, the concentration would also have the effect of creating a strong position of market leadership for Volvo. Given that the proposed transaction would increase Volvo's share of the Swedish city bus market from around [40 % to 50 %] to approximately [80 % to 90 %], it would also be likely to have the effect that other suppliers (all of which have a market share below 10 %) would become increasingly likely to accept Volvo's price leadership. The same applies for the intercity bus market, where Volvo's market share would increase from [50 % to 60 %] to [80 % to 90 %], and where the only significant competitor would be removed. Consequently, the transaction would also reduce the risk of an aggressive response from the smaller suppliers, if Volvo were, for example, to increase its prices.

(308) It follows from the foregoing that, prior to the concentration, Scania has been the only significant source of competitive pressure faced by Volvo on the Swedish market. This source of competition would be removed as a result of the proposed concentration, in a way that would significantly strengthen Volvo's ability to exercise its market power. The market investigation does not support a finding that the buying power of the merged entity's customers would be such as to significantly restrain its behaviour on the market.

Conclusion on the Swedish markets for city and intercity buses

(309) For all of these reasons, the notified transaction would create a dominant position on the Swedish markets for city and intercity buses.

Dominant positions would be created on the Finnish, Norwegian and Danish markets for city and intercity buses

(310) The structure of the Finnish, Norwegian and Danish markets for city and intercity buses are all to a significant extent similar to that described in relation to Sweden. This section will therefore focus on the existing differences, whilst making references to the previous section where appropriate.

Market size and market shares

(311) According to the notification, in 1998, [< 140] city buses were registered in Finland, [< 180] in Norway and [< 250] in Denmark. The corresponding figures for intercity buses were [< 130], [< 180] and [< 270].

(312) For city buses, the parties' combined market share was [90 % to 100 %] in Finland (Volvo having [70 % to 80 %] and Scania [20 % to 30 %]), in Norway it was [60 % to 70 %] (Volvo [40 % to 50 %] and Scania [10 % to 20 %]) and in Denmark, the parties' combined share was [80 % to 90 %] (Volvo [50 % to 60 %] and Scania [30 % to 40 %]).

(313) For intercity buses, the parties' combined market share was [80 % to 90 %] in Finland (Volvo [60 % to 70 %] and Scania [20 % to 30 %]), [80 % to 90 %] in Norway (Volvo [60 % to 70 %] and Scania [10 % to 20 %]) and [70 % to 80 %] in Denmark (Volvo [50 % to 60 %] and Scania [20 % to 30 %]).

(314) As can be seen from these market share figures, the same relationship that exists in Sweden, where Volvo has consistently been the stronger of the two parties, also applies in Finland, Norway and Denmark. The main reason for Scania's relatively higher proportion of the combined market share in Denmark appears to be related to its recent acquisition of DAB, the most significant body-builder in that country.

(315) According to the information submitted by Volvo, the market share of the largest competitor in each of these markets ranges from approximately 5 % to just below 20 %⁽²⁹⁾. It therefore follows that the merged entity, in a similar way as described for Sweden, would have the benefit of a market position several times stronger than

⁽²⁹⁾ Volvo had submitted that DaimlerChrysler would have a market share around 30 % for city buses in Norway. This, however, has not been confirmed by the investigation.

that of its closest competitor in each of the relevant markets. The market investigation also supports a finding that Volvo and Scania have been each other's main competitors in Finland, Norway and Denmark, and that customers generally consider them as the closest substitutes for one another.

- (316) It may be noted that, if market shares were to be calculated at the Nordic level, the combined city bus sales of Volvo and Scania would be [80 % to 90 %] (Volvo [50 % to 60 %] and Scania [30 % to 40 %]). For intercity buses the corresponding Nordic figures would also be [80 % to 90 %] (Volvo [50 % to 60 %] and Scania [20 % to 30 %]). Consequently, all conclusions stated for the four individual countries would remain valid, even if the market were to be assessed at the Nordic level.

Demand characteristics

- (317) The Finnish, Norwegian and Danish market have not yet reached the same degree of privatisation as the Swedish market and demand is generally less concentrated than in Sweden. Consequently, for the same reasons as indicated in relation to Sweden, it must be concluded that Volvo has not been able to demonstrate that the existing level of buying power of the city and intercity bus operators in Finland, Norway and Denmark will be sufficient to negate the merged entity's ability to take advantage of the increased market power that it would gain from the proposed concentration.

Barriers to entry and potential competition

- (318) The barriers to entry relating to aftersales services and limited attractiveness of the market described in relation to Sweden are equally applicable to Finland, Norway and Denmark. Moreover, for the same reasons as described in relation to Sweden, Volvo's arguments on 'shrinkage' cannot be accepted for the other Nordic countries. Instead, it has to be concluded that, again for the same reasons as indicated for Sweden, the proposed concentration would remove Scania as the only effective source of competitive pressure from each of these markets, and that this would significantly strengthen Volvo's ability to exercise its market power.
- (319) The merged entity's competitive advantage in Finland, relating to its significantly larger service network, has been described in the section on touring coaches. The situation is similar in Norway, where Volvo has 65 service points and Scania has 50, as well as in Denmark, where Volvo and Scania have 31 and 29 service points respectively. Again, all competitors have significantly fewer service points in each of these countries (about a third as many in Norway for the largest competing service network, and, for Denmark, about half the coverage of the combined Volvo/Scania network).

Consequently, it can be concluded, also for Norway and Denmark, that the merged entity's competitors would be at an additional disadvantage in terms of being able to offer customers a comprehensive service network. Finally, the same cost-related restraints to increase the capillarity of the service network as has already been described applies also in these countries.

Conclusion on the Finnish, Norwegian and Danish markets for city and intercity buses

- (320) For all of these reasons the notified transaction would create a dominant position on the Finnish, Norwegian and Danish markets for city and intercity buses.

A dominant position would be created on the Irish market for city buses

Market size and market shares

- (321) In 1998, the total volume of the Irish market was 110 city buses. The parties' combined market share in 1998 was extremely high, amounting to 92 %, with Volvo having 60 % and Scania 32 %. Volvo's market share has been consistently very high in Ireland over the last three years, with shares of 88 % in 1997 and 79 % in 1996. Volvo's traditionally strong position in Ireland stems from its acquisition of British Leyland in the late 1980s.
- (322) With the exception of DAF and Dennis, both of which had a market share of 11 % in 1996, but have subsequently gone down to less than 5 %, no other supplier (i.e. DaimlerChrysler and MAN) has managed to reach a market share exceeding 10 % in the period between 1996 and 1998. In fact, Scania had no sales in the Irish city bus market in 1996 and 1997, but, as indicated above, managed to obtain a 32 % market share in 1998⁽³⁰⁾.
- (323) Scania's ability to penetrate the Irish market on a significant scale, where no other producer has managed to do so over the last three years, provides another strong indication that customers generally consider Volvo and Scania as the closest substitutes for city buses. The proposed concentration would therefore remove this newly introduced element of competition from the Irish market.

⁽³⁰⁾ In its reply, Volvo claims that this market share is not related to sales but registrations since Scania's market share is based on city buses leased by Bus Éireann from Scania Bus and Coach in the United Kingdom. However, Volvo has not proposed that the relevant market should exclude leased vehicles and has not provided figures based on sales only.

(324) It follows from the very high combined market shares of Volvo and Scania, that all other suppliers have extremely weak market positions (below 5 %). Consequently, the merged entity would have a market share almost 20 times higher than that of its closest competitor.

Demand characteristics

(325) In Ireland, city bus services are still largely operated by public authorities, the most important of which is Dublin Bus. Consequently, most purchases of city buses in Ireland will be subject to a public tendering procedure. However, as can be seen from the table in recital 291, Volvo has (apart from the loss of market share to Scania in 1998) been able to retain very high and relatively stable market shares over the last three years. Against this background, it must be concluded that there is no evidence to permit the conclusion that the public procurement procedure would enable other city bus suppliers to provide the same degree of competition to the merged entity, as Scania has recently demonstrated its ability to do.

(326) In conclusion, Volvo has not been able to demonstrate that the existing level of buying power of the city bus operators in Ireland will be sufficient to negate the merged entity's ability to take advantage of the increased market power that it would gain from the proposed concentration.

Barriers to entry and potential competition

(327) Volvo's strong position in Ireland is linked to its acquisition of British Leyland's bus division and the perception that it has provided the best combination of price and aftersales services. Its ability to consistently maintain very high market shares, despite the fact that the market is mainly driven by public tendering procedures, indicates that other suppliers find it difficult to enter the market on a significant scale. For the reasons indicated in relation to the Nordic markets, the limited size, and therefore attractiveness, of the Irish market appears to be another important barrier to significant entry.

(328) Given that Scania, over the last three years, has been the only other supplier able to significantly challenge Volvo for sales of city buses in Ireland, it must be concluded that the proposed concentration would improve Volvo's ability to use its market power. For example, in the absence of the concentration, Volvo would, if it considered raising its prices by a small but significant amount, have had to balance the potential gains from this against the risk that a number of its customers would switch to Scania, which in 1998 demonstrated its ability to make significant inroads into the market. Following the implementation of the proposed concentration, such a customer reaction would, from a revenue viewpoint, become neutral to Volvo. Consequently, as

no other supplier has demonstrated the same ability to take market share, the proposed operation would, as a direct result, reduce Volvo's risk in exercising its market power.

(329) It follows from the foregoing that, prior to the concentration, Scania has been the only significant source of competitive pressure faced by Volvo on the Irish market. This source of competition would be removed through the proposed concentration, in a way that would significantly strengthen Volvo's ability to exercise its market power. The market investigation does not support a finding that the buying power of the merged entity's customers would be such as to significantly restrain its behaviour on the market. It is therefore concluded that the notified transaction would create a dominant position on the Irish market for city buses.

Conclusion on the Irish market for city buses

(330) For all of these reasons the notified transaction would create a dominant position on the Irish market for city buses.

Conclusion on the bus markets

(331) The proposed concentration would create a dominant position on the markets for touring coaches in Finland and the United Kingdom, as well as on the markets for city and intercity buses in Sweden, Finland, Norway and Denmark as well as on the Irish city bus market.

V. UNDERTAKINGS PROPOSED BY VOLVO

(332) In order to ensure the adoption of a decision pursuant to Article 8(2) of the Merger Regulation, on 21 February 2000, Volvo submitted the following undertakings that would take effect on the date of adoption of such a decision.

A. HEAVY TRUCKS

1. Opening up of Volvo and Scania's dealer and service networks in Sweden, Finland, Denmark and Norway, as well as the Volvo network in Ireland.
2. Divestiture of Volvo's 37 % stake in Bilia AB (a distributor in the Nordic countries).
3. Best efforts to ensure abolition of Swedish cab crash test.
4. A two-year temporary suspension of the Scania brand name in Sweden, Finland and Norway.

B. COACHES, CITY AND INTERCITY BUSES

1. Same opening of sales and service network and suspension of Scania brand as for heavy trucks (1 and 4 above).
2. Divestiture of three bus and coach body-building plants (two in Denmark, one in Sweden).
3. Access to body-building capacity in Finland.

(333) Volvo has contacted the Swedish Government and requested that it eliminate the specific Swedish technical safety standard applicable to cabs used on heavy duty trucks (the 'cab crash test') as soon as practically possible and in any event no later than six months following the adoption of the Commission's Decision. After the adoption of the Commission's Decision, Volvo undertakes to use its best efforts to ensure abolition of the cab crash test in Sweden and to keep the Commission informed of progress in this regard on a basis to be determined by the Commission.

(334) Volvo has proposed to open up its and Scania's sales and service networks by informing all authorised dealers and service centres in relevant countries that they are free to establish contractual relations with Volvo's competitors, including their foreign and/or Swedish subsidiaries, for the sale and leasing of those competitors' heavy trucks, city buses, intercity buses and performance of maintenance, servicing and repair related thereto or to provide the same on an ad hoc basis without the need to establish a separate company or to carry out such activities at separate premises. Moreover, according to the proposal, dealers and service stations may terminate, at their option, with effect two months after providing written notice to Volvo, any existing dealership agreements or service centre agreements. Volvo further commits itself not to discriminate against any actual or prospective dealer or service centre on the basis that they deal with any of Volvo's competitors. In the event that the combined share of Volvo and Scania heavy trucks falls below 40 % of total heavy truck sales in the relevant countries in a given year, Volvo shall, according to its proposal, be free to enter into exclusive arrangements with new or existing dealers or service centres and shall no longer be bound by the commitment, except as such rights may be provided in the dealership or service centre agreements.

(335) Volvo proposes to divest its stake in Bilia AB and the three bus and coach body-building plants (Volvo's plant in Aabenraa, Denmark, Scania's plant in Silkeborg,

Denmark and Scania's plant in Katrineholm, Sweden) within six months of the Commission's Decision, with the possibility of an extension of another six months. The proposal also contains provisions for supervision and possible sale by a trustee.

(336) The undertaking to provide third parties access to Volvo's bus and coach body-building capacity relates to Volvo's subsidiary, Carrus Oy ('Carrus'), situated in Finland. According to Volvo, Carrus currently has a practice of supplying bus and coach bodies to unrelated bus, coach and chassis suppliers on commercial terms. Volvo would commit to oblige Carrus to supply bus and coach bodies to Volvo's competing European bus and coach suppliers for their sales of buses and coaches in Finland on terms that are non-discriminatory as compared with the supply of Carrus bus and coach bodies to Volvo for sale in Finland.

(337) Finally, the proposal not to use the Scania trade mark for new heavy trucks, city/intercity buses and coaches sold in Sweden, Finland and Norway for a period of two years would commence on the date of the closing of the transaction or as soon as contractually possible. The proposal is subject to provisions, which means that the Scania vehicles would continue to be sold during the two-year period, but under another trade mark to be decided solely by Volvo. The proposal is also subject to the fulfilment of existing contracts and orders, as well as to the sale of products in existence prior to the closing.

VI. ASSESSMENT OF THE PROPOSED UNDERTAKINGS

(338) Even though the undertakings proposed by Volvo could, if properly implemented, have some beneficial effect on the competitive situation in the relevant markets, the Commission has, following contacts with market participants, come to the conclusion that the proposed undertakings are insufficient to resolve the competitive concerns resulting from the elimination of Volvo's main competitor, Scania.

A. HEAVY TRUCKS

(339) The market test has confirmed that Volvo's proposals relating to the Swedish cab crash test and the suspension of the Scania brand in Sweden, Norway and Finland would have little or no impact on the competitive situation. The cab crash test can only be abolished by the Swedish Government, which has not indicated that the test would be removed within the six-month period referred to by Volvo. Despite Volvo's undertaking to use its best efforts to seek its abolition, it is therefore not possible to conclude for the purposes of this assessment

that the test would be abolished. Equally, the proposed suspension of the Scania brand is of limited significance. First, it relates to a two-year period (and does not extend to Ireland). Moreover, it would not imply the withdrawal of the Scania product line which, according to the proposal, would continue to be sold under another brand of Volvo's choice. Nor would the suspension apply to existing contracts, binding orders or products in stock. In conclusion, these proposals would appear very limited in substance and consequently unlikely to have any competitive impact.

(340) The market test has also revealed scepticism about the proposed divestiture of Volvo's 37 % stake in Bilja AB (a truck, bus and car distributor in the Nordic countries), even though this would remove this vertical link. According to the market test, even if this link were to be removed, Bilja would, in the same way as all other Volvo dealers, continue to be economically dependent on Volvo, in the sense that a large majority of its business activities relate to the sale and service of Volvo vehicles. Moreover, it has been suggested that the most likely buyer is Ford, which owns the Volvo car division, and uses Bilja for its distribution of cars in the Nordic countries. Ford is not active on the market for heavy trucks and buses and would therefore not necessarily provide any new competition on the market. In addition to that, Volvo has indicated that it may terminate its contract with Bilja AB if this latter company is acquired by a competing manufacturer and thereby takes on a competing brand.

(341) As to the measures proposed for the opening up of Volvo's and Scania's dealer and service networks, the market test has confirmed that they are unlikely to provide the existing dealers with the necessary strong incentive to take on an additional brand or to switch completely to a new brand. The proposal would basically leave the existing structure of the Volvo and Scania organisations intact (that is to say, there would be no divestiture, active termination of contracts, etc.). This in itself leads to significant doubts as to the effectiveness of the proposal. Therefore, in order to conclude that the proposal would have a significant impact on the market structure in the foreseeable future, it would be necessary to demonstrate that, despite its lack of structural features, it is highly likely to provide the existing dealers with a strong incentive to change their behaviour in a way that would have a structural impact on the market. There are, however, both formal and economic arguments against such a conclusion. Most respondents believe that the proposal is unlikely to have any significant effect on reducing New Volvo's market share in the next two to three years. Both formal and economic arguments have been given against the effectiveness of the proposal.

(342) First, a number of respondents have questioned the effectiveness of the proposal as regards Scania's dealer and service network which includes wholly owned dealers in all Nordic countries. In Sweden [30 % to 40 %] of Scania's sales are made through wholly owned dealers. The corresponding figures for Norway and Finland are even higher ([90 % to 100 %] and [90 % to 100 %], respectively). In fact, the proposed opening up of the Scania network would only relate to three independent dealers in Norway and to one independent dealer in Finland. For these reasons some respondents have suggested that divestiture of these wholly owned networks would have a greater market impact.

(343) Secondly, all Volvo and Scania dealers are, according to the block exemption for motor vehicle distribution⁽³¹⁾, already able to take on a competing brand. The only requirement is that they do so on separate business premises. The fact that Volvo and Scania dealers have not, in the past, used the possibility of taking on another brand has been mentioned as an indication of the limited attractiveness of dual-branding distribution (both from the viewpoint of the supplier and the distributor). In addition to that, Volvo has, in relation to the proposed Bilja divestiture, reserved its right to terminate its distribution agreement with Bilja should it be acquired by a competitor. Third parties have indicated this as Volvo's indirect acknowledgment of the unattractiveness of dual-brand distribution.

(344) Thirdly, for the service stations, the market test has confirmed that the Volvo and Scania networks have already, in the past accepted, de facto, to do work for competing brands. Therefore, the proposal is unlikely to lead to any substantial change.

(345) Fourthly, a number of reasons have been indicated for concluding that the proposal would not provide existing Volvo and Scania dealers and service stations with a sufficiently strong economic incentive to take on another brand. From a purely economic viewpoint it has been stressed that these dealers will continue to be economically dependent on revenues derived from sales and servicing of Volvo and Scania vehicles for a long period (up to 15 years has been mentioned). The reason for this continued dependency is that trucks and buses are durable goods, and that, consequently, the main part of the 'rolling stock' of such vehicles will continue to be Volvos and Scania's for the foreseeable future. In this context it should be recalled that a dealer achieves about

⁽³¹⁾ Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995, p. 25).

[70 % to 80 %] of its revenue from service and sales of spare parts (and [20 % to 30 %] from sales of new vehicles). Other disincentives for dealers to take on new brands have been indicated to be the risk that New Volvo could decide to adopt a new policy of more direct sales from the head office (stated to represent 40 % of all Volvo's sales in Finland today), and the fact that there is a widespread belief that New Volvo will reduce the size of its combined dealer network in the future, and that 'disloyal dealers' would run a higher risk of being excluded at that stage.

(346) Fifthly, Volvo's proposed undertaking not to discriminate against dealers which take on a new brand has been criticised as being too vague and impossible to monitor effectively. Similarly, the provision that the undertaking should no longer have effect if the combined Volvo and Scania market share were to fall below 40 % has been criticised as making it impossible for both dealers and other suppliers to take on the necessary long-term investments related to building up a sufficient installed base of a new brand.

(347) Sixthly, the market test has also confirmed that the proposal is unlikely to enable other suppliers to create a sufficiently capillary network to provide effective competition with New Volvo (in particular, owing to the limited incentives for dealers as set out above). Most respondents believe that only a very limited number of Volvo and Scania dealers would, within a two to three year period, significantly reduce their dependency on New Volvo by taking up other brands. For this reason the proposal would, at most, provide each of the other suppliers with access to a limited number of dealers.

(348) Seventhly, competitors believe that the risks involved in entering or expanding their market presence through the existing Volvo and/or Scania networks would be high. In this context, it has been explained that the sunk costs involved would still be significant. The investments would include, *inter alia*, employing a full network of specialised mechanics and dedicated sales personnel, training, investment in specialised tools, stock of spare parts and computer and administrative systems. In addition, there would be significant commercial costs in terms of selling the products at prices which are, at least, 10 % to 20 % below those of Volvo and Scania, as well as offering the dealers a significantly higher margin to compensate for the lower volumes until a sufficient installed base is reached. Given all of these costs, competitors have expressed strong reservations about entrusting the marketing of their vehicles to dealers that

will continue to sell Volvo and Scania, and which, for significant periods of time, have been telling their customers that the best option is a Volvo (or Scania) vehicle.

(349) In conclusion, the proposed undertaking to open up the dealer and service networks is not structural in character, and is unlikely to provide a strong incentive for the existing dealers to change their behaviour in a way that would have a structural impact on the market.

B. COACHES, CITY AND INTERCITY BUSES

(350) As stated above, Volvo's proposal includes the same opening up of the dealer and service network as for heavy trucks. This means, first, that the proposal does not include any measure directed at the coach market in the United Kingdom, where New Volvo would have a combined market share of 52 %. Secondly, as indicated by Volvo itself, the dealer and service network is of more limited interest for, in particular, the city and intercity bus markets than for heavy trucks (as these vehicles are normally sold directly from the manufacturer's head office and since servicing is more often carried out in-house by the customers). This means that the lack of incentive for dealers and service stations to take up new brands would apply to an even greater extent than for heavy trucks. This proposal can therefore not be expected to have a significant impact on the competitive situation in the relevant bus and coach markets.

(351) Moreover, for the same reasons as indicated in relation to heavy trucks, the proposal for a limited suspension of the Scania brand name is unlikely to have any significant impact on the relevant markets for coaches, city buses and intercity buses.

(352) The market test has also confirmed that the proposal to allow competitors access to Volvo's body-building capacity in Finland (Carrus Oy), would provide little or no change from the existing situation. Some respondents have indicated that they have been, and would continue to be, unwilling to contract with Carrus, as it is a wholly owned subsidiary of Volvo. Others, including Volvo itself, have confirmed that Carrus has already, in the past, had a practice of supplying bus and coach bodies to unrelated bus and coach suppliers on commercial terms. The addition of a behavioural non-discrimination undertaking is also unlikely to increase the attractiveness of the proposal (and would from a logical viewpoint only have an effect if Carrus has been discriminating against third parties in the past). For these reasons, the proposed undertaking relating to Carrus is unlikely to have any significant impact on the relevant markets for coaches, city buses and intercity buses.

(353) Volvo's proposal to divest three bus and coach body-building plants (Volvo's plant in Aabenraa, Denmark, Scania's plant in Silkeborg, Denmark and Scania's plant in Katrineholm, Sweden) has also been criticised as not improving market access for competitors to the relevant market and, more generally, as being insufficient to remove the identified competition concerns.

(354) First, a number of respondents have indicated that this proposal is in effect limited to a proposal to divest the resulting overcapacity of New Volvo. It has been pointed out that both Volvo and Scania have recently invested in modern body-building capacity in Poland, and that the most efficient Nordic plants will be retained (Carrus in Finland, and Säffle in Sweden). None of the contacted third parties have expressed any interest in acquiring the three proposed plants.

(355) It has also been submitted that the divestiture of the three proposed plants would not significantly facilitate access to the Nordic markets for competitors, in particular as there is a strong belief that these plants, for technical compatibility reasons, will continue to be dependent on chassis supplies by New Volvo for the foreseeable future. This dependency will also mean that after sales service on the completed vehicles will have to continue to be performed by New Volvo.

(356) Finally, according to Volvo, the Aabenraa plant produced [230 to 240] city and intercity bodies in 1999. Out of these, [190 to 200] were delivered to Denmark, [20 to 30] to Sweden, and [10 to 20] to Norway. The Scania plant in Katrineholm delivered only city bus bodies, [90 % to 100 %] of which went to the Swedish market (part of the remaining [0 % to 10 %] went to Finland and Iceland). Scania's Silkeborg plant manufactures both city and intercity buses. It produces bodies under the DAB trade mark. Apart from [10 to 20] units registered in northern Sweden, all of its production is destined for the Danish market. Therefore, although the undertakings proposed by Volvo for the coach, city and intercity bus markets are, at least partly, structural in character, the market test has indicated that they would not significantly facilitate access to the relevant market for competitors and that, even under the most favourable interpretation, they are of insufficient scope to eliminate the competition concerns in each of the relevant markets.

(357) In conclusion, the undertakings proposed by Volvo for the coach, city and intercity bus markets are, even under the most favourable interpretation, of insufficient reach to remove the competition concerns in each of the relevant markets.

New proposal by Volvo

(358) At a very late stage in the procedure, on 7 March 2000, Volvo proposed a new and substantially modified undertaking. The new proposal differs from the above described undertakings, submitted on 21 February 2000 in the following respects:

- the proposal to divest Volvo's 37 % shareholding in Bilvia AB is withdrawn,
- the proposal to suspend the use of the Scania brand name for a two-year period is withdrawn,
- a new proposal has been introduced, [concerns distribution networks],
- a provision has been added to the proposal to divest the Scania body-building plants [concerns sales of city and intercity bus chassis].

(359) Article 18(2) of Regulation (EC) No 447/98 provides that commitments intended by the parties to form the basis of a decision of compatibility pursuant to Article 8(2) of the Merger Regulation are to be submitted to the Commission within three months of the decision to open proceedings, although the Commission may, in exceptional circumstances, extend that period. Volvo did not put forward any reasons, which could be regarded as constituting such exceptional circumstances. The last day for submitting proposed commitments in this case was 21 February 2000 and Volvo's new proposal was submitted on 7 March 2000. In the Commission's view, there was nothing in the new proposal which Volvo could not have included in an undertaking submitted within the three-month time limit. The present Decision therefore will not take this proposal into account.

(360) It may be added that the implementation of the new proposals would be complex from a procedural viewpoint, in particular as regards the proposal to terminate the contracts with dealers and/or divest sales points. The procedure according to which interested third parties would be able to take over part of the Volvo and Scania distribution capacity is also complex and would require detailed examination. Such procedural complexities inherently, and in particular when submitted at a late stage in the procedure, increase the difficulty in assessing the proposal's potential effects from a substantive viewpoint.

(361) It is not possible to conclude that the new proposal in an obvious and clear-cut way would remove all the identified competition concerns. The complexity of the new proposals would have made it impossible, in the short time remaining before the expiry of the deadline under Article 10(3) of the Merger Regulation, for the Commission to evaluate them effectively. Further investigation would have been called for, and it would also have been necessary to seek the views of interested third parties pursuant to the relevant provisions of the Merger Regulation.

pliance with the proposed undertakings, it would create dominant positions in the markets for heavy trucks in Sweden, Norway, Finland and Ireland, for touring coaches in Finland and the United Kingdom, for intercity buses in Sweden, Finland, Norway and Denmark, and for city buses in Sweden, Finland, Norway, Denmark and Ireland, each of which would result in effective competition being significantly impeded in the common market within the meaning of Article 2(3) of the Merger Regulation and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Conclusion on the proposed undertakings

Article 1

(362) For the reasons indicated above, the Commission has come to the conclusion that the undertakings proposed by Volvo on 21 February 2000 are insufficient to remove the competitive concerns resulting from the proposed acquisition of Scania. As concerns the new proposal of 7 March 2000, it is firstly concluded that Volvo has not been able to justify its submission several weeks after the expiry of the deadline for submission of undertakings. In any event the new proposal does not in an obvious and clear-cut way remove all the identified competition concerns.

The concentration notified to the Commission by AB Volvo on 22 September 1999, whereby AB Volvo would acquire sole control over Scania AB is hereby declared incompatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

AB VOLVO
40508 Göteborg
Sweden.

VII. OVERALL CONCLUSION

Done at Brussels, 14 March 2000.

(363) In view of the above, the Commission has come to the conclusion that the notified concentration is incompatible with the common market and the functioning of the EEA Agreement, since, even assuming full com-

For the Commission

Mario MONTI

Member of the Commission