EN

Case No COMP/M.1980 - VOLVO / RENAULT V.I.

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
with undertakings
Date: 01/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.09.2000

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6.2 DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.1980 – Volvo/Renault
Notification of 24 July 2000 pursuant to Article 4 of Council Regulation No 4064/89[1] (hereafter "the Merger Regulation")

1. On 24 July 2000 AB Volvo ("Volvo") notified to the Commission its acquisition of sole control of Renault Vehicule Industriels ("RVI").

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Volvo is registered in Sweden and is primarily active in the manufacture and sale of heavy and medium trucks, buses, construction equipment, marine and industrial engines, as well as aerospace components.

4. Following the Commission's decision to declare the proposed merger between Volvo and Scania incompatible with the Common market[2], Volvo remains a significant shareholder in Scania, with 45% of the capital and just over 30% of the votes. The Scania shareholding will not form part of the proposed concentration as Volvo has committed vis-à-vis the Commission to divest its shareholding in Scania. The details of this commitment are set out below.

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1 OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

2 Case No. COMP/M.1672 Volvo/Scania, Commission decision of 14.03.2000.

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5. RVI is a wholly owned subsidiary of Renault S.A. of France. RVI is active in medium and heavy trucks, which are sold under the "Renault" brand name in Europe and under the "Mack" brand in the US.

6. With effect from 1 January 1999, RVI and Iveco (part of the Fiat group) merged their respective activities in the production and sales of buses (city buses, inter-city buses and coaches) into the Irisbus joint venture[3]. Renault's participation in Irisbus will not form part of the proposed concentration, as Renault has committed vis-à-vis the Commission firstly to rescind the Irisbus joint venture, and, secondly, to sell an ongoing bus business equalling Volvo's French bus activities. The details of this commitment are set out below.

II. THE CONCENTRATION

7. On 18 July 2000, Volvo reached an agreement to acquire all of Renault's shares in RVI, in exchange for a percentage of Volvo's share capital corresponding to 15% of the voting and capital thereof. Volvo will purchase said shares from its current shareholders and/or on the market. Renault has stated that it intends to increase its participation in Volvo to 20% through purchases on the market. Renault will have two representatives on the Volvo board, but will not acquire joint control over Volvo. The notified operation therefore constitutes an acquisition of sole control by Volvo over RVI and a concentration within the meaning of Art. 3(1)b of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The combined aggregate world-wide turnover in 1999 of the undertakings concerned exceeds EUR 5,000 million (Volvo EUR 14.2 billion, RVI EUR 6.5 billion). The Community-wide turnover of both Volvo and RVI exceeds EUR 250 million (Volvo EUR 7.1 billion, RVI EUR 2.7 billion). Neither Volvo nor RVI achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Therefore, the concentration falls within the scope of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

9. The proposed operation affects five main areas: heavy trucks (>16 tonnes), medium trucks (7-16 tonnes) and buses (city buses, inter-city buses and touring coaches) in a limited number of Member States.

A. Relevant product markets

i) Trucks

10. The notifying party submits that the truck market is commonly subdivided into three market segments according to the truck's gross vehicle weight: the light-duty segment

[3] Case No. IV/M.1202 Renault/Iveco, Commission decision of 22.10.1998.

(below 7 tonnes), the medium-duty segment (7-16 tonnes), and the heavy-duty segment (above 16 tonnes).

11. Light trucks are employed primarily in small business activities and collective and governmental services, *e.g.*, local deliveries to shops and businesses, courier and parcel delivery services, mobile workshops, and service vans, as well as fire, police, and ambulance services. Medium trucks are used for short and medium-distance hauling of light or medium cargo. Heavy trucks are mostly used for long haul, heavyweight or bulky merchandise transport and short-distance hauling of heavy cargo.

12. RVI distributes and sells the “Mascott” light truck which has a 1.8% share of the EEA light truck market, with a market share exceeding 5% only in France (9.9%). Volvo does not manufacture light trucks. Volvo imports and sells the Mitsubishi "Canter" light truck in France, the United Kingdom, Italy, Germany, and Scandinavia. The Canter has no more than 1.2% market share in any Member State where it is distributed by Volvo. Thus, even if the market shares of the Mascott and Canter are added, there is no Member State in which the Parties would have a market share of 15% or more, and accordingly there are no affected markets in light trucks. The only truck segments affected by the proposed concentration are therefore the medium truck segment and the heavy truck segment.

13. The notifying party relies on previous Commission decisions[4] to identify medium and heavy trucks as separate relevant product markets. The market investigation carried out by the Commission broadly confirms the submission of the notifying party in this respect. In addition, a number of elements suggest that this distinction is appropriate.

14. The technical configuration of heavy trucks is more sophisticated than medium trucks as regards the key components such as engine type and type and number of axles. This higher degree of technical sophistication is due to the requirements of load capacity, durability, and operating costs, which are stricter for heavy trucks than for medium trucks. Because of these different technical requirements, different production lines are typically used to produce trucks belonging to the two categories, and manufacturers are able to concentrate their production on one range with little or no presence in another range. Finally, medium and heavy trucks are used for different types of transport, and the two categories are not considered by customers to be interchangeable.

15. In accordance with the Commission's decision in *Volvo/Scania* the notifying party furthermore submits that the heavy truck market should not be further divided into rigid heavy trucks and tractor heavy trucks. The market investigation has broadly confirmed this.

16. The relevant product markets are therefore heavy trucks and medium trucks.

ii) Buses/Coaches

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[4] Cases IV/M.004 *Renault/Volvo* (07.11.1990), IV/M.1519 *Renault/Nissan* (12.05.1999) and COMP/M.1672 *Volvo/Scania* (14.03.2000).

17. The Commission has already examined the bus and coach markets on several occasions.[5] 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 buses, each corresponding to a separate product market. The categories are city buses, inter-city buses and touring coaches.

18. 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 emphasizes comfort and storage space rather than ease of entry and exit. 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 buses exist in between. Furthermore, the various types of buses 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. The Commission also concluded in *Volvo/Scania* that, although all major bus manufacturers in Europe were present in all three segments, there was not supply side substitution to such a degree that a broader product market definition was merited.

19. The notifying party has not presented elements that convincingly suggest that the product market definitions used by the Commission in its most recent decisions should be changed. The Commission considers it appropriate to assess the competitive impact of the notified transaction on the basis of separate markets for city buses, inter-city buses and touring coaches.

B. Relevant geographic markets

<u>i) Heavy trucks</u>

20. In the *Volvo/Scania* decision, the Commission considered that, as far as heavy trucks were concerned, Sweden, Norway, Finland, Ireland, and (possibly) Denmark constituted individual separate geographic markets. For other parts of the Community the geographic market definition was left open.

21. The Commission's finding of national geographic markets in the above mentioned countries was based on several factors, among others price level differences, customer preferences, technical requirements, suppliers' location, the configurations of distribution and service networks and large market share variations.

22. The notifying party submits that the relevant geographic market for heavy trucks is wider than national, and in particular believe that criteria applied by the Commission in *Volvo/Scania* show that for example France and Portugal are part of broader geographic markets that would include some neighbouring countries. In particular,

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5 Cases IV/M.477, *Mercedes-Benz/Kässbohrer* (14.02.1995), *Renault/Iveco* (22.10.1998) and IV/M.1672, *Volvo/Scania* (14.03.2000.

Volvo claims that there is an absence of geographic price discrimination and entry barriers, that all manufacturers are established in France and Portugal, that France and its neighbouring countries are important transit countries as opposed to end-destination countries such as the Nordic countries. It furthermore claims that substantial and growing volumes of used trucks are being moved between Member States for resale, and, finally, that there is no local production in the sense that the truck production is destined for a specific "home market" but rather to supply several Member States.

23. The Commission considers that the findings in *Volvo/Scania* of national geographic markets in several countries are still valid; in particular this is true for Finland, as has been confirmed by the market investigation in this case. Concerning the other parts of the Community, for which the geographic market definition was left open in the *Volvo/Scania* decision, and in particular France and Portugal, the market investigation has shown that several of the elements, that led to the finding of national geographic markets, are also present in France and Portugal. There are therefore indications that these markets may indeed also be national. However, the precise definition of the relevant geographic markets for those parts of the Community in which no precise definition was given in the *Volvo/Scania* decision can, for the purposes of this decision, be left open, as the proposed transaction would not lead to competition problems even if the markets were national.

ii) Medium trucks

24. The notifying party submits that the conditions of competition in the market for medium trucks are largely the same as those in the market for heavy trucks. Accordingly, as with heavy trucks, the notifying party considers that the relevant geographic market for medium trucks is at least wider than national.

25. The Commission agrees that there are several similarities between the markets of medium and heavy trucks, which has also been confirmed by the market investigation. For the same reasons as indicated above the Commission consequently considers that there are many indications that the relevant geographic markets may also be national for medium trucks. However, for the purposes of the present decision, it is not necessary to decide on the precise delineation of the geographic markets, as the proposed transaction would not lead to competition problems even if the markets were national.

iii) Touring coaches, city buses and inter-city buses

26. In its *Volvo/Scania* decision the Commission concluded that Finland and the United Kingdom constituted separate relevant geographic markets for coaches. Furthermore, the markets for city- and inter-city buses were assessed separately in each of the Nordic countries (Sweden, Finland, Norway and Denmark) and Ireland. For the other Member States the precise delineation of the relevant geographic markets was left open, as the operation would not lead to the creation or strengthening of a dominant position. The factors pointing to national markets were that price levels differed significantly between Member States, purchasing habits were not similar across Member States, purchasing was done on a national basis, technical requirements and preferences varied between Member States and market shares varied significantly between Member States.

27. The notifying party submits that there are several factors which instead point to relevant geographic markets wider than national such as the increasing presence of large, sophisticated purchasers, standardisation of technical standards following legal harmonisation, reduced intra-EEA transaction costs, and greater price transparency.

28. The Commission, however, still finds that there are many signs that markets are indeed national. However, the precise definition of the relevant geographic markets for those parts of the Community in which no precise definition was given in *Volvo/Scania* can, for the purposes of this decision, be left open, as the proposed transaction would not lead to competition problems even if the markets in that part of the EEA were national.

C. Assessment

<u>i) Heavy trucks</u>

29. In its *Volvo/Scania* decision, the Commission found that such a combination would have created or strengthened a dominant position on the markets for heavy trucks in Sweden, Finland, Norway, Ireland and possibly in Denmark. The Volvo and Scania market shares are quite balanced in all of these countries. While RVI is active in all the above-mentioned countries except Sweden, its market share is however only >5% in Finland. Therefore, as Volvo has committed to divest its shareholding in Scania, the continued presence of the latter as an independent alternative to the merged Volvo/RVI group means that it will not be necessary to further investigate the effects of the proposed transaction as far as Sweden, Norway, Ireland and Denmark are concerned.

30. In Finland, RVI has an extensive co-operation with a national producer, Oy Sisu AB ("Sisu"). RVI and Sisu established in 1997 a 50/50 joint venture company RS Hansa Auto OY ("Hansa") to handle distribution of RVI and Sisu trucks, parts and accessories in Finland and the Baltic area. Sisu is a wholly owned subsidiary of Partek Oy Ab ("Partek") that is active in the design, manufacture, and sale of heavy trucks and their spare parts and accessories. It specialises in extra-heavy chassis and multiple-axle trucks with high power used by lumber and civic work companies. Sisu trucks are produced in Sisu's Kaarja (Finland) plant using primarily RVI-produced parts. RVI and Sisu have equal rights in the management of Hansa and the selection of its key personnel. Hansa has a four-member board of directors, with RVI and Sisu each naming two directors. Key decisions are taken by unanimous approval of all directors.

31. In the *Volvo/Scania* decision, the extent of this co-operation led the Commission to conclude that the RVI and Sisu market shares should be combined in the competitive assessment of the Finnish market. In 1999 RVI and Sisu had a combined Finnish market share of 18% (RVI 3% and Sisu 15%). At the same time Volvo had a market share of 37% in Finland. Thus, the merged entity would have a combined market share of 55%, compared to Scania's 30% and DaimlerChrysler's 8%. Furthermore, both MAN and Iveco have only 3% and DAF as little as 0.3%. The market investigation has revealed that the addition of RVI's share to Volvo would not in itself have created competition concerns as the main competition is seen to take place

between Volvo, Scania and Sisu, and to a lesser extent, DaimlerChrysler.[6] However, due to the link with Sisu, the proposed transaction would bring together the largest competitor on the Finnish market and the only national producer. Furthermore, it should be noted that Sisu has had a period with financial problems during which it has lost significant market share (it had 30% in 1993). The involvement of RVI has stabilised the position of Sisu and in fact Sisu has gained market share since 1997. Thus, it can not be excluded that Sisu has a higher potential than its present share seems to indicate. In the absence of the submitted undertaking concerning Sisu (see below), the proposed transaction would therefore have raised serious doubts as to its compatibility with the common market as the proposed operation could lead to the creation of a dominant position on the Finnish market for heavy trucks.

32. Outside the markets that were discussed in detail in the *Volvo/Scania* case, the proposed concentration would create significant overlaps only in two European countries, namely in France (RVI 36%, Volvo 13%) and in Portugal (RVI 19%, Volvo 24%). The combined Volvo/RVI share would be around 30% or below in all other countries.

33. In 1999, the combined entity had a market share of 49% in France (RVI 36%, Volvo 13%) with DaimlerChrysler having 16%, Scania 11%, DAF 9%, Iveco 8% and MAN 6%. Hence, all the main European producers achieve substantial sales in France. All these producers have significant French sales and service network. According to the parties, RVI has seen its market share steadily erode over the last several years. Thus, in 1994 it had a share of 42%, in 1997 38.4% and in 1998 37.9%. In the same period Volvo's share has been fairly constant around 13%-15%. The main beneficiary of RVI's loss of market share seems to have been DAF which was the smallest competitor in 1994 with 3% but in 1999 had overtaken both MAN and Iveco. The French market is generally seen as one of the most competitive markets in Europe, which can be explained by the presence of a particularly high proportion of large truck fleets.

34. The notifying party has presented information to show that RVI and Volvo are not typically considered as each other's closest substitutes in the French heavy truck market. The information is based on studying the effect of a relative price change that occurred in the middle of 1998 when Volvo implemented a […] price increase in France that was not matched by other manufacturers. The analysis suggests that customers regard Scania and DAF as particularly good substitutes for Volvo and other suppliers (including RVI) as less good substitutes. The data used in the study are somewhat limited and, for instance, do not allow for in-depth econometric modelling. However, the Commission recognises that the analysis presented by the notifying party does lend some support to the claim that RVI and Volvo are not particularly close substitutes in the French heavy truck market. Furthermore, the Commission's market investigation provides additional confirmation of this contention. For example, one competitor indicated that (not only in France, but also the rest of Europe): "The customer product perception of Renault and Volvo is completely different. Volvo has managed to develop an image that would imply a superior quality to the other truck makes e.g. Renault. Renault has traditionally

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6 The Finnish market is seen as difficult to penetrate due to the strong positions of the "domestic" manufacturers Volvo, Scania and Sisu in a rather small market.

always operated in the lower end of the various price segments fuelling a perception that they market a lower standard of vehicle. Due to the above, the traditional customer groups of both makes are in majority different…"

35. For all the above reasons, the Commission considers that the notified operation does not raise competition concerns in the French market for heavy trucks.

36. In Portugal, the combined entity had a market share of 43% in 1999 (RVI 19%, Volvo 24%), with Scania having 17%, DaimlerChrysler 13%, DAF 12%, Iveco 8% and MAN 7%. Thus, as in France, all the main producers are present in the market. The combined market share of Volvo and RVI is more or less the same as in 1994 where it would have been 42%. However, the relative positions of the two have changed significantly. In 1994 RVI's market share was as low as 9%, while Volvo had 33%.

37. Also for the Portuguese market the notifying party submits that Volvo and RVI are not each other's closest substitutes. In fact Volvo claims that they are rather perceived as complementary in the marketplace since Volvo is most recognised for its rigid heavy trucks for national and local transport, while RVI's strength lies in tractors for national and international long-distance transport. The Commission has examined the extent to which Volvo and RVI are seen as close substitutes in Portugal. The market investigation has confirmed that they are indeed not seen as particularly close substitutes.

38. Finally, there is a particular feature of the Portuguese market for heavy trucks which makes market share evolutions hard to interpret. The Portuguese imports of used trucks have grown from 1,864 in 1994 to 6,889 in 1999. As a comparison, the number of new trucks sold in 1999 was 4,183. The data for used truck imports show that the "high quality" manufacturers Volvo, Scania and DaimlerChrysler have either higher or more or less the same share among imported used trucks as in new truck sales, while in particular RVI but also Iveco have a significantly lower share among used trucks than among new trucks. If sales of both new and used trucks in 1999 were to be combined, RVI and Volvo would have a share of 34%.

39. On the basis of all the above elements the Commission considers that the notified operation does not raise competition concerns in the Portuguese market for heavy trucks.

ii) Medium trucks

40. At a European level, DaimlerChrysler achieved 36% of all sales of medium trucks (7-16t) in 1999. Iveco had 24%, MAN 17%, DAF 8%, RVI 7% and Volvo 5%. The proposed transaction will therefore bring together the two smallest European manufacturers[7] and the combined entity would still only be number four at the European level. The parties have proposed that their respective activities in medium trucks are mainly complementary from a geographical viewpoint, and that their combined market shares would not be indicative of dominance. Indeed, in the countries where the proposed concentration would lead to an overlap, the combined

7 Excluding Scania which has an insignificant presence in this market (0.1% at the EEA level; highest share 1.7% in Austria). For this reason, the proposed merger between Volvo and Scania did not affect the medium truck market.

shares would only exceed 30% in three countries: France (RVI 39%, Volvo 5%), Denmark (RVI 2%, Volvo 37%) and Portugal (RVI 16%, Volvo 15%).

41. In France, RVI and Volvo had a combined market share of 44% in 1999, DaimlerChrysler a share of 25%, Iveco 23%, MAN 5% and DAF 2%. As for heavy trucks, RVI has also been losing market share in the medium trucks markets. In 1994 RVI thus had 48%. Volvo has had a fairly steady market share at the level 5%-7%. The manufacturers that have gained market share over this period are DaimlerChrysler, which had 18% in 1994, and, to a lesser extent, MAN, which had 2% in 1994. The main characteristic of this market seems to have been competition between the three leading players, RVI, DaimlerChrysler and Iveco. It is unlikely that the addition of Volvo's share to RVI will change the dynamics of this market in any significant way. The proposed transaction therefore does not raise competition concerns in this market.

42. In Denmark RVI and Volvo had in 1999 a combined market share of 39%, MAN a share of 29%, DaimlerChrysler 15% and Iveco 14% and DAF 4%. Volvo has seen its market share decrease rapidly from 45% in 1997 to 37% in 1999. This is mainly due to the very successful expansion by MAN, which has increased its share from 19% to 29% in only two years. Given the strong position and expansion of MAN, the presence of two other significant players, DaimlerChrysler and Iveco, and the small addition of market share (RVI only has 2%), the proposed transaction does not raise competition concerns in this market.

43. In Portugal RVI and Volvo had in 1999 a combined market share of 31%, both DaimlerChrysler and Iveco a share of 17%, DAF 11% and MAN 7%. Furthermore, also Isuzu (8%) and Toyota (6%) were present. In fact, Toyota only entered the Portuguese market in 1999 while Isuzu in 1998 had a share of 1.5%. Given the large number of significant competitors with substantial market shares the proposed transaction does not raise competition concerns in this market.

iii) Buses/Coaches

44. In the *Volvo/Scania* case the Commission found that a dominance problem would have been created in a number of national city bus markets (Sweden, Denmark, Norway, Finland and Ireland), inter-city bus markets (Sweden, Denmark, Norway and Finland) and coach markets (Finland and the United Kingdom). The undertaking to divest the Scania shares will (except for the UK, see below) mean that the present case does not raise any concerns on those markets.

45. Although the Irisbus participation has previously been held by RVI, this participation will, according to the notification, not be transferred to Volvo[8]. Instead Renault S.A will initially keep this participation. However, given that Renault S.A. will become the largest shareholder in Volvo and be represented on the board, there are a number of factors that would have raised doubts as to the sufficiency of this legal separation. First, there are significant synergies, and therefore links, between the production and sales of heavy trucks and buses. Thus, a Renault bus (currently under the control of

[8] The existing agreements with Iveco preclude RVI from transferring its stake in Irisbus to any third party without the agreement of Iveco.

Irisbus) will use a significant number of components that are produced by RVI at the same sites as where it manufactures its trucks. Second, there will also be important synergies in terms of distribution, sales and service between the Renault trucks and buses. Following its acquisition of RVI, Volvo would therefore, through its ownership of the RVI production sites, distribution and service networks, acquire a certain influence over the Renault bus business conducted by Irisbus. At the same time Renault would through its participation (including at board level) as the largest shareholder in Volvo and as a controlling shareholder in Irisbus be in a position to have influence over both companies and to have access to confidential information concerning both companies' activities.

46. Furthermore, based on the market share information provided by the parties, there are a number of markets where the combined shares of Volvo and Irisbus could raise serious doubts. These markets are set out in the below table.

	City-buses	Inter-city buses	Coaches
France	Volvo [0-10]% Irisbus [70-80]%	Volvo [0-10]% Irisbus [60-70]%	Volvo [0-10]% Irisbus [40-50]%
Greece	Volvo [10-20]% Irisbus [30-40]%		
Italy		Volvo [0-10]% Irisbus [50-60]%	Volvo [10-20]% Irisbus [20-30]%
Portugal			Volvo [20-30]% Irisbus [10-20]%
Spain	Volvo [0-10]% Irisbus [20-30]%	Volvo [10-20]% Irisbus [20-30]%	Volvo [10-20]% Irisbus [20-30]%
UK			Volvo [40-50]% Irisbus [0-10]%

47. In order to avoid the potentially complex issues arising from the assessment of the notified transaction's effects on the above markets, Renault has offered a two-stage undertaking, which will remove any possibility that serious doubts could arise on any relevant bus market.

48. According to this undertaking Renault would, in a first step, rescind the Irisbus joint venture with Iveco. The principal aim of Renault would be that it and Iveco would each receive back the businesses they originally contributed to the joint venture. This first step of the undertaking will remove any concerns relating to the above indicated bus markets in Greece, Italy, Portugal, Spain and the UK, since all - or a very large proportion - of the Irisbus activities in those countries are based on the sale of Iveco products.

49. Irisbus' market share in France is, however, almost exclusively made up by the sale of Renault products. For this reason Renault has, in a second step, undertaken to divest

an existing and viable bus business, representing a market share in France, which is equal to or higher than that of Volvo. Renault has three separate bus production entities (RVI buses, Heuliez and Karosa), either of which could fulfil these requirements.

50. The proposed undertaking will ensure that the present operation would only lead to very minor market share additions in any national market and will therefore remove any possibility that serious doubts could arise on any relevant bus market.

V. COMMITMENTS SUBMITTED BY THE PARTIES

51. As mentioned above, the parties have submitted undertakings in relation to Volvo's shareholding in Scania, as well as in relation to RVI's involvement in Sisu and Irisbus. All of the undertakings are subject to normal provisions concerning their fulfilment, including the terms thereof, sale to independent buyers, the involvement of trustees etc. The full text of the commitments is provided in Annex 1, which forms an integral part of this decision.

52. The effects for the assessment of the sale of Volvo's shareholding in Scania and Renault's commitment with respect to the Irisbus joint venture have already been described above. The last commitment concerns RVI's co-operation with Sisu in Finland.

The Sisu/Hansa commitment

53. The parties commit to sell RVI's share in Hansa. Following the implementation of this commitment, Volvo will therefore not have the decisive influence on the sales and marketing of Sisu trucks that RVI's has had so far. Moreover, Volvo and RVI have undertaken, for a transitional period, to provide a certain support to Sisu. This support should enable Sisu to adapt to the new situation and thereby preserve Sisu's viability. The undertaking therefore solves the above indicated competition concerns on the Finnish market for heavy trucks.

VI. ANCILLARY RESTRICTIONS

54. In the notification, the parties have identified a number of contractual obligations that they consider to be directly related to and necessary to the implementation of the concentration. These relate firstly to certain licenses for trademarks and other intellectual property rights used by RVI and Renault. To the extent that these arrangements reflect the economic equivalent to a partial transfer of these rights they serve to ensure that the acquirer will receive the full benefit of the acquired assets, and can therefore be accepted.

55. Secondly, the parties have requested treatment as ancillary restrictions for certain supply arrangements providing for the continued supply to Volvo or Renault at the same level and price basis as previously applied within the Renault group. According to the notification the parties have not yet decided on the duration of these arrangements, and instead contemplate to negotiate their termination in good faith at some unforeseen point in time in the future. Therefore, and even though such arrangements may in principle be acceptable for a transitional period in order to allow the parties to smoothen disruptions of traditional lines of internal supply, the

Commission does not consider that the current arrangement, which in principle could be of unlimited duration, is necessary for the implementation of the concentration.

56. Finally, the parties have agreed certain non-compete provisions, whereby Renault undertakes for a period of five years from completion not to compete with the divested business and not to solicit certain key RVI employees for a period of 18 months. Considering the relatively high degree of customer loyalty in the truck markets and the long life-cycles of heavy trucks, the indicated periods can be accepted.

VII. CONCLUSION

57. For the above reasons, the Commission has, subject to full compliance with the submitted undertakings, decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

PROPOSED UNDERTAKINGS

I. SCANIA

V undertakes to:

1. divest the S Shares (defined as […] S shares held by the Volvo Group) within a maximum period of […] subject to paragraph I.3 hereof from the later of the date of the Commission's or the US Department of Justice's decision to approve the RVI transaction (the "Effective Date");

2. appoint, within […] of the Effective Date, an independent Trustee to be approved by the Commission who will have a mandate to (a) monitor and ensure V's compliance with the undertaking provided in paragraph I.1 hereof (for avoidance of doubt, it being understood that the Trustee will not be granted the mandate to carry out the divestiture) and (b) […];

3. provided that the maximum period in I.1 above will automatically be extended by a […] period ("the Second period") to the extent that the Trustee can establish to the Commission's satisfaction, on the basis of the criteria set out in Annex A, that the divestiture of the S Shares cannot be carried out without incurring an appreciable risk that the sale will be conducted at a price […] and provided that the Commission will consider a further extension, by no more than […] from the date of the divestiture *(i.e.*, after V has sold […] of the S Shares), with respect to the divestiture of the […] shareholding held by V in S's issued stock to the extent the Trustee can establish to the Commission's satisfaction that the divestiture of […] the S Shares would seriously harm the interests of V and/or V's shareholders;

4. for the purposes of this undertaking […].

II. SISU

V and RVI will use their best efforts to fulfil this undertaking so that it does not result in threatening Sisu's continued operation on the relevant market and in a manner that will respect Sisu's or Partek's rights under the relevant agreements. Nevertheless, V and RVI recognize that the Commission could raise serious doubts to the creation of a long-term ownership link between V and Sisu on the Finnish market. V and RVI therefore undertake to eliminate such concerns as described below within the time periods prescribed below.

1. V and RVI undertake to divest the RVI direct and indirect interests in Hansa Auto Oy ("Hansa") (the "Hansa Interests") to Partek or an independent buyer to be approved by the Commission within a maximum period of […] of the Effective Date under reasonable commercial terms and conditions, provided that this period may be extended by an additional […] period if the trustee appointed pursuant to paragraph II.2 hereof establishes to the Commission's satisfaction that V and RVI have, despite their best efforts, been unable to carry out such divestiture within the initial period. If V and/or RVI has not entered into a binding contract with a purchaser approved by the Commission within […] from the Effective Date, or has not completed the sale within a

further period of […], the trustee shall have the power to effect the divestiture […] from the Effective Date.

2. V and RVI undertake to appoint an independent Trustee to be approved by the Commission within one month of the Effective Date. The Trustee will have a mandate to (i) monitor the compliance of the Parties with this undertaking, (ii) ensure that Hansa is managed independently and with a view to protect its viability and competitiveness by the current management, (iii) ensure, where applicable, that no competitively sensitive confidential information concerning Hansa's management is disclosed to V or RVI (to the extent this information is not already in their possession), that appropriate measures ("firewalls") are implemented to avoid such exchanges, and that confidential technical and commercial documents pertaining to the Sisu and Hansa operations are returned to the relevant companies, (iv) provide written reports to the Commission (with a non-confidential copy to V and RVI) on the progress of its mandate at the end of every […] period from the Effective Date, and (v) to the extent the undertaking provided under II.1 hereof has not been discharged within the first […] period provided above, enter into negotiations with buyers approved by the Commission for the sale of the Hansa Interests.

3. V and RVI undertake to give Hansa and/or Sisu a reasonable level of support during a transitional period. Such support would consist of (i) the continuation of the Distribution Agreement between RVI and Hansa in Finland on an exclusive basis and subject to Hansa's right to terminate such Agreement upon […] notice, (ii) the continuation of the Agreement between RVI and Sisu concerning the supply of cabins, engines, and gearboxes subject to Sisu's right to terminate such Agreement upon […] notice, (iii) the continuation of the current technical co-operation between RVI and Sisu, (iv) the continuation of the Export Plan and Arrangements agreed between RVI and Sisu, subject to Sisu's right to terminate such Agreement upon […] notice, and (v) a commitment to […]. For avoidance of doubt, unless agreed by V, RVI, and the purchaser of the Hansa Interests (such agreement not to be entered on behalf of V or RVI by the trustee appointed under paragraph II.2 above), V and RVI will not be obliged to cover losses sustained by Hansa or Sisu, nor to make any payments of any kind to the buyer in order to facilitate the divestiture mentioned in paragraph II.1 above. If the buyer of the Hansa Interests is Partek or a Partek affiliate, then, subject to paragraph II.4 below, the period of such support will be […] from the Effective Date, with a possible […] extension at the option of Partek. If the buyer of the Hansa Interests is a firm other than Partek or a Partek affiliate, then, subject to paragraph II.4 below, the period of such support will be […] from the Effective Date. V, RVI, and Hansa, Sisu, or the purchaser of the Hansa Interests may agree to enter into new agreements to be negotiated in good faith under regular commercial terms.

4. If control over Partek, Sisu, or Hansa is acquired by a competitor of V or RVI during the period of support provided in paragraph II.3 above, then the support measures described in paragraph II.3 above would become terminable at the election of V, RVI, or Sisu upon […] notice.

III. <u>IRISBUS</u>

1. Subject to I's rights under the relevant contract, R undertakes to rescind the IB joint venture with I within a period of […] of the Effective Date. The unwinding of, and contribution to, R and I of the businesses originally owned respectively by R and I should

not result in any appreciable losses, damages, or costs for R as defined in Annex B ("Losses"), provided that R shall not unreasonably withhold its consideration of any bona fide business offer put forward by I to rescind the IB joint venture.

2. Within […] of the Effective Date, R undertakes to appoint an independent Trustee to be approved by the Commission, which will be granted a mandate to (i) monitor R's compliance with this undertaking, including with respect to R's reasonable consideration of any bona fide I proposals as provided in III.1, (ii) provide written reports to the Commission (with a non-confidential copy to R) on the progress of its mandate on a […] basis, (iii) ensure that no confidential information relating to buses is exchanged between R and V and that appropriate measures to protect confidentiality of such information are implemented pursuant to paragraph III.3 hereof, and (iv) to the extent the commitment provided under paragraph III.1 above has not been discharged within the initial […] period, ensure that such undertaking is carried out […], whether by unwinding IB (including, as the case may be, […]) or by sale of R's stake in IB to I or to any independent third party approved by the Commission, within an additional period of […].

3. During both periods provided under III, 1 and 2 R and V will ensure that no information concerning their respective activities in IB or VB is exchanged whether through board representation or otherwise. In particular, R representatives will not take part in V's board discussions concerning bus-related issues.

4. R undertakes to divest to an independent buyer approved by the Commission within […] of the closing of the implementation of the transactions set out in paras. III, 1 and 2 […] business activity representing a French market share higher or equal to VB's market share in France. To the extent the Trustee can establish that R has made its best efforts to comply with the undertaking, this period will be extended by an additional […] period during which the Trustee will be granted a mandate to sell such business […].

IV. PROCEDURE OF APPOINTMENT OF TRUSTEES

1. V, RVI and R, as the case may be, shall propose the name of two independent and experienced institutions that it considers appropriate to be appointed as trustee. Such proposal shall be made within ten working days from the Effective Date. The Commission shall have the discretion to approve or reject the proposed institutions in accordance with the following section. Upon rejection, the party making the proposal shall submit the names of at least two further institutions, within ten working days of being informed of the rejection. If the Commission approves more than one name, the party making the proposal shall be free to choose the trustee to be appointed from among the names approved.

2. Along with any request for approval of a proposed trustee under this undertaking, V, RVI, or R shall submit for the Commission's approval a proposed draft mandate setting forth in detail the scope of the mandate and the responsibilities to be performed under the mandate. Once a trustee has been approved by the Commission, no changes shall be made to the mandate without the Commission's approval.

3. The trustee shall report immediately to the Commission any breach of the Undertaking that comes to its attention, provided that the Parties are promptly

informed of the existence and the content of any such report whether written or oral. Without prejudice to the aforementioned, the trustee shall at all times be given the opportunity to discuss the progress of the mandate with the Commission as well as to seek advice from V, R, RVI, and/or the Commission as to any issues raised by the implementation of the Undertaking.

4. V, RVI, and R shall provide any appointed trustee with all such assistance and information, including copies of all relevant documents, as the trustee may require in carrying out its mandate.

5. As soon as this Undertaking has been implemented, the trustee shall request the Commission to be discharged. However, the Commission may at any time require the reappointment of the trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

V. COMMISSION APPROVALS

1. If the Commission has not within ten (10) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval pursuant to this Undertaking, the proposal shall be deemed to be approved.

2. Provided that the procedure for approval of a potential purchaser or trustee has been complied with, V, RVI and R shall be free to accept any offer or to select the offer it considers best.

ANNEX A

1. Subject to Trustee providing it with an expert opinion establishing that despite good faith efforts by V it has not been possible to sell the S Shares without incurring an appreciable risk of obtaining a Negative Price, as defined hereunder the Commission agrees to extend the deadline provided in paragraph I.1 of the Undertaking by […].

2. A Negative Price will be defined as a price that is less than […].

3. The risk of a Negative Price will be determined by the Trustee on the basis of an expert opinion from one or more investment bank(s) or recognized equity market participant(s) retained by the Trustee, at the beginning of each […] period, starting from the Effective Date, on the basis of:

   (i) unsolicited offers received spontaneously from market participants;

   (ii) general equity market conditions;

   (iii) investor sentiment vis-à-vis S and all relevant considerations prevailing at the time (*e.g.*, free float and liquidity); and

(iv) available disposal methodologies (*e.g.*, block trade, accelerated bookbuilding, fully marketed offering, dividend to V shareholders).

ANNEX B

For the purposes of Undertaking, paragraph II.1:

1. “Losses” means any loss, damage, or cost in excess of […].

2. “Fair Market Value” means […].