

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 September 1995

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

(Case IV/M.582 — Orkla/Volvo)

(Only the English text is authentic)

(Text with EEA relevance)

(96/204/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to the EEA Agreement, and in particular Article 57 (1) thereof,

Having regard to the Commission decision of 23 May 1995 to initiate proceedings in the 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⁽²⁾,

Whereas:

- (1) On 18 April 1995 AB Fortos and Orkla AS notified the Commission of a proposed concentration by which they intend to combine their respective beverage interests into a new joint venture.
- (2) After examination of the notification the Commission has concluded that the notified concentration falls within the scope of Regulation (EC) No

4064/89 and falls to be assessed by the Commission in cooperation with the EFTA Surveillance Authority in accordance with Article 58 of and Protocol 24 to the EEA Agreement.

I. THE PARTIES

- (3) AB Fortos ('Fortos') is a wholly-owned subsidiary of AB Volvo ('Volvo'), the Swedish motor vehicle group. Fortos, in turn is owner of BCP Branded Consumer Products AB ('BCP') which owns AB Pripps, Bryggerier ('Pripps'), a Swedish beverage company, and Hansa Bryggeri A/S ('Hansa') another beverage company which is based in and operates in Norway. Fortos is also the owner of Falcon Bryggerier AB ('Falcon') which is a company producing beer, soft drinks and mineral water in Sweden.
- (4) Orkla AS ('Orkla') is a Norwegian company whose activities are concentrated in branded consumer products, chemicals and financial investments. Orkla owns the whole of the share capital of Ringnes A/S ('Ringnes'), a Norwegian beverage producer.

II. THE OPERATION

- (5) The operation involves the creation, by Fortos and Orkla, of a jointly-owned beverage company 'BCP-JV'. This will be achieved by the creation of a

⁽¹⁾ OJ No L 395, 30. 12. 1989. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

⁽²⁾ OJ No C 76, 16. 3. 1996, p. 14.

new company [...](). The result of these steps in that the interests of Orkla and Fortos in Pripps, Hansa and Ringnes will be owned by BCP-JV. This company will produce, market and distribute a range of beers, soft drinks and mineral waters in both Sweden and Norway. These beverages include both those manufactured under its own name and those produced under licence, e.g. Carlsberg, Coca-Cola, etc.

- (6) It is the aim of BCP-JV to become a significant, Scandinavian, beverage operation which is able to compete in a market which is expanding and becoming more international in nature. With this in mind, it is indicated in the business plan of the joint venture that the involvement of other shareholders will be sought, including [...]().

III. COMMUNITY/EEA DIMENSION

- (7) Volvo and Orkla have a combined aggregate worldwide turnover of ECU 19 543 million; both companies also have a Community-wide turnover in excess of ECU 250 million (that of Volvo being ECU [...]() million and Orkla ECU [...]() million) of which not more than two-thirds is achieved in one and the same Member State. The operation therefore has a Community dimension.
- (8) Both Volvo and Orkla have turnovers exceeding ECU 250 million in the territory of the EFTA States. Consequently, this case falls to be assessed by the Commission, in cooperation with the EFTA-Surveillance Authority, in accordance with Article 58 and Protocol 24 of the EEA Agreement.
- (9) According to Article 8 of and Protocol 3 to the EEA Agreement, products set out at point 2202 of the Harmonized Commodity Description and Coding System and beers brewed from substances other than malt are not covered by the Agreement. This Decision is based on Article 57 of the EEA Agreement in accordance with the merger regulation and therefore does not relate to the Norwegian market for these products. However, these products are considered in so far as their production and distribution is relevant for the purpose of the assessment set out below for Norway.

IV. CONCENTRATION

Joint control

- (10) Fortos and Orkla will own, respectively, 49 and 51 % of the shares of BCP-JV: however, BCP-JV is

(¹) Deleted; business secret.

to issue a convertible bond by means of which Fortos's financial stake in BCP-JV will increase to 55 % and Orkla's interest will fall to 45 %.

- (11) The parties have agreed to enter into a shareholders' agreement which provides that Fortos and Orkla will have equal influence over BCP-JV. Decisions affecting the development of commercial policy and competitive strategy, adoption and implementation of annual and long-term budgets and business plans as well as decisions regarding strategic or financial objectives shall be taken jointly by Fortos and Orkla.
- (12) BCP-JV's board of directors will consist of four members with both Fortos and Orkla appointing two each. The chairman, who will be appointed jointly, will be one of the Orkla board members but will have no casting vote.
- (13) The parties have prepared and jointly approved a business plan for the period 1995 to 1998 which indicates the direction BCP-JV intends to follow and the financial savings and positions that will result from the operation.
- (14) On the basis of the foregoing it can be concluded that BCP-JV will be jointly controlled by Orkla and Fortos.

Autonomous economic entity

- (15) The three beverage companies involved in the transaction, Hansa, Pripps and Ringnes, currently operate as independent companies in Norway and Sweden. BCP-JV will acquire the assets and liabilities of these existing undertakings including trademarks and know-how. The shareholders are to invest financial resources in BCP-JV which are sufficient to enable it to fulfil its plans to become an independent operator and a significant, international, beverage company.
- (16) Consequently, BCP-JV will be an autonomous, economic entity.

Cooperative aspects

- (17) In addition to its stake in BCP-JV, Fortos also retains a majority shareholding in Falcon, another beverage company active in the Swedish market. However, Orkla will leave the beverage market through the creation of BCP-JV and consequently

it is apparent that coordination can not arise as only one parent, Fortos, remains active in the market of the joint venture ⁽¹⁾. Therefore the operation does not lead to any relevant risk of coordination.

- (18) Consequently, it is concluded that BCP-JV is concentrate in nature and that the present operation constitutes a concentration within the meaning of Article 3 of the merger regulation.

V. RELEVANT PRODUCT MARKETS

- (19) The parties have identified three relevant product markets principally affected by the creation of BCP-JV being; beer, carbonated soft drinks (CSD) and mineral water. As regards CSD in Norway, the Commission is not competent (as explained in

paragraph 9) to undertake any assessment in respect of BCP-JV. For Sweden no overlap for CSD occurs and no threat to potential competition (due to the power of international licensors such as Coca-Cola) takes place. Consequently, whilst not concluding that CSDs are a relevant product market in themselves, they are not assessed further in this Decision. Non-carbonated soft drinks account for a very small volume in Norway and Sweden and therefore have not been analysed separately.

Beer

(a) Norway

- (20) Beer is classified by alcoholic strength by volume (ABV) as shown in the table below which also indicates the rates of excise duty applicable to each level of alcoholic strength:

		<i>(Nkr/l)</i>				
		1.1.1991	1.1.1992	1.7.1992	1.1.1993	1.1.1994
Beer Class 0	(ABV % < 0,70)	0,86	1,00	1,02	1,02	1,06
Beer Class I	(ABV % 0,70 to 2,50)	1,64	1,75	1,85	1,85	1,93
Beer Class II	(ABV % 2,50 to 4,75)	10,44	11,45	12,10	12,10	12,62
Beer Class III	(ABV % 4,75 to 7,00)	18,05	19,80	20,90	20,90	21,80

		<i>(Nkr/l)</i>
		2.1.1995
Class A	(ABV % < 0,7)	1,08
Class B	(ABV % 0,7 to 2,75)	1,96
Class C	(ABV % 2,75 to 3,75)	7,36
Class D	(ABV % 3,75 to 4,75)	12,76
Class E	(ABV % 4,75 to 5,75)	18,16
Class F	(ABV % 5,75 to 6,75)	23,56
Class G	(ABV % 6,75 to 7,00)	24,64

- (21) Accordingly it has to be considered whether the above beer classification needs to be taken into account in defining the different relevant product markets. The revised beer classes, which were introduced with effect from 1 January 1995, do not change the assessment set out below.
- (22) It is important to note that the consumption of Class II beer is dominant in Norway accounting for some 90 % ⁽²⁾ of total consumption in both 1993 and 1994.

- (23) The Norwegian Lov om omsetning av alkoholholdig drikk m.v. of 2 June 1989 No 27 ('Alcohol Act 1989') restricts, in Section 3-1, the sale of Class III beers to the AS Vinmonopolet (the State-owned retail monopoly) or to the hotel and catering industry if the outlet has the appropriate licence from the local authority. Such beers accounted for less than 1 % ⁽²⁾ of total consumption in 1993 and 1994. Similarly there is limited evidence to suggest that consumers substitute Class 0 beers for CSD: such beers accounted for some 3 % ⁽²⁾ of total consumption in 1993 and 1994.

⁽¹⁾ Commission notice on the distinction between concentrative and cooperative joint ventures (OJ No C 385, 31. 12. 1994, p. 1).

⁽²⁾ Source: Norsk Bryggeri- og Mineralvannindustri Forening (the Association of Norwegian Soft Drink Producers and Brewers) and competitors' replies.

- (24) Class III and Class 0 beers account for very small amounts of total consumption and the competitive

assessment of the case would not be affected if these products were defined as separate product markets or not.

in different competitive environments for these categories of customers.

Substitution of Class II beer

- (25) It is necessary to assess whether any substitution of Class II beers ('pils') takes place in respect to other beverages. At the outset it is considered that as both the intermediate and the ultimate consumer buys pils beer for its alcoholic properties and taste they are unlikely to wish to substitute it for another beverage.
- (26) As regards price differences between pils beers and other non-alcoholic drinks it is apparent that brewery retail list prices show a considerable difference between the products, e.g. 0,5 litre of Coca-Cola being some 50 % of the price of the equivalent volume of pils beer. Whilst not strictly comparable, such a difference is repeated for other alcoholic beverages: the lowest retail list price of the AS Vinmonopolet for a bottle of wine is currently some NOK 60, the brewery retail list price of a 0,7 litre bottle of pils beer is some NOK 14. Therefore in terms of price alone there is unlikely to be substitution between these products.
- (27) Such price differences are repeated for the ultimate customer. For the retail sector customers are typically faced with prices three to four times higher for beer when compared to CSD. Similarly, in the hotel and catering industry pils beer is an estimated 40 % more expensive than an equivalent amount of CSD. Consequently in terms of price alone there is unlikely to be substitution between these products by the ultimate consumer.
- (28) Therefore it is concluded that there is no likelihood of substitution between pils beers and the other products mentioned above.

Different competitive environments between the retail trade and the hotel and catering industry

- (29) Canadean Limited's The 1995 West Europe Beer Report (the 'Canadean Report') which is a generally used source in the sector, categorises the sale of beer between sales by the retail trade and sales by the hotel and catering industry. The report concludes that the division between these two types of customer amounted to 75 %/25 % respectively for both 1993 and 1994 in Norway. Therefore it is necessary to investigate whether the relations between suppliers and these customer types result

- (30) The retail industry comprises four retail chains which account for some 97 % of the Norwegian grocery market with these stores stocking a wide range of bottled beers which is, in general, the only form available to the retail trade. This fact differentiates it from the hotel and catering industry where the bulk of supplies are made by way of tank or keg (barrel). The means of distribution is, in general, similar for both with the brewery delivering beer from the brewery to the retail store or bar or restaurant.
- (31) The retail trade, in general, is supplied with beer at list prices which are lower than the equivalent prices to the hotel and catering industry; on the other hand the hotel and catering industry benefits from discounts to a greater degree than those available to the retail trade. The resulting net prices are, in general, lower for the hotel and catering industry than the retail trade.
- (32) The ultimate customer in the hotel and catering industry is purchasing a product that differs from the retail industry in so far as the customer is buying a degree of service and atmosphere not present in the retail industry when the beer is consumed at home. This fact has been recognized by the European Court of Justice which has stated that 'From the consumer's point of view, the latter sector, comprising in particular public houses and restaurants, may be distinguished from the retail sector on the grounds that the sale of beer in public houses does not solely consist of the purchase of a product but is also linked with the provision of services ... it follows that in the present case the reference market is that for the distribution of beer in premises for the sale and consumption of drinks' (1).

- (33) Finally, it is unlikely that the hotel and catering industry would purchase bottled beer from retail outlets for sale in bars, etc. This is because the hotel and catering industry would find it impractical to handle and transport the bottled volumes required between the two types of sale outlet.
- (34) For all the above reasons the Commission has concluded that the relevant product markets are the sale of beer to the retail and hotel and catering industries.

(1) C-234/89, Stergios Delimitis v. Henninger Bräu AG [1991] ECR I, p. 935.

(b) *Sweden*

- (35) As in Norway beer is categorized into classes according to its alcoholic strength as follows:

Class	% vol alcohol
I	0 to 2,25
II	2,26 to 3,5
III	> 3,5

- (36) The market shares of these various classes, which differ in their stratification to Norway, are much less divergent in Sweden with Class I having 17 % of the total volume of the beer market in 1994, Class II 49 % and Class III 34 %.

- (37) The Systembolaget (the Swedish State retail sales, alcohol monopoly), which generally sells Class III beer, plays a more important role in the market for beer, accounting for some 18 % of total beer consumption in 1994, than the AS Vinmonopolet in Norway which has sales accounting for less than 1 % of total beer consumption. In this respect it is understood that the Swedish competition authority has previously split beer into different product markets according to its alcoholic class.

- (38) However as noted below there is no overlap between the parties in the beer market in Sweden. Therefore, it is not necessary to have a precise conclusion on this point for the assessment of this case and the assessment set out below only relates to the possible adverse effects of the exclusion of a potential competitor.

Bottled water

- (39) The parties both sell bottled water in Norway: Ringnes [...] ⁽¹⁾ million litres (a share of [...] ⁽²⁾ of sales of bottled water in Norway) and Hansa with [...] ⁽¹⁾ million litres (share of [...] ⁽³⁾). Bottled water in Norway is an emerging market with relatively low consumption per capita, at about six to eight litres, and growing at high rates (30 % in 1994). This level of consumption is in strong contrast with the level of consumption in more mature markets, such as France (97 litres per capita per year), Italy (94 litres) or Germany (85 litres). Bottled water in Norway is bottled not only from a source

but also from the tap water used to manufacture soft drinks. Therefore, and because of the absence of any brand image of this product for Norwegian consumers and the absence of barriers to entry, any bottler of soft drinks in Norway can easily produce and market bottled water. The market is in a phase of take-off and is not characterized by the proliferation of brands typical of more developed markets nor by the commercial barriers characterizing mature markets (in terms of massive advertising, access to shelf space and brand notoriety).

- (40) In view of the initial take-off stage of the bottled water consumption in Norway, of the specific characteristics of the market outlined above and the lack of any significant barriers to entry in terms of brand support and advertising or saturation of the market, it is unlikely that the operation will significantly impede effective competition. In any event it has to be noted that the undertakings submitted by the parties in this case imply *de facto*, through the sale of Hansa's bottling assets, that there will be no reinforcement of Ringnes's previous position.

VI. THE RELEVANT GEOGRAPHIC MARKETS

- (41) The main impact of the notified operation will be felt in Norway. Ringnes does not have any significant sales or market share for beverages in Sweden, so the overlap of the parties' activities and any possible competition concern under the merger regulation with the notified operation will therefore arise in Norway. The analysis will focus on Norway and will deal with Sweden to the extent that Ringnes could be a potential competitor to the Swedish breweries.

Beer*Brands*

- (42) Beer is a consumer product sold generally in glass bottles and under a brand name. In particular in Norway, domestic brands such as Hansa and Ringnes, and also a number of Norwegian brands sold mainly in certain regional areas, account for most (over 90 %) of consumption. The main foreign brands sold in Norway under licence (Carlsberg, Heineken, Tuborg and Guinness) and in most cases adapted to Norwegian alcohol specifications, represent together 10,6 million litres, i. e. around 5 % of consumption by volume (source: report of the Association of Norwegian Soft-drink Producers and Brewers).

⁽¹⁾ Deleted; business secret.

⁽²⁾ Deleted; business secret: between 75 and 85 %.

⁽³⁾ Deleted; business secret: < 5 %.

Distribution

- (43) Beer is a bulky product, subject to significant transport costs. The incidence of transport is particularly high in Norway for two basic reasons: the geographic conditions of Norway, where distances by road tend to be large and the fact that beer is distributed directly from the breweries to each retail outlet, be it in the food retailing or the hotel and catering markets. In Norway, most food products are distributed by wholesalers, in several cases linked to the large food retailing chains. The only exceptions to the general system are currently beverages, tobacco and fresh agricultural products, which are delivered by the producers to each selling point. The sale in Norway of beverages, and in particular beer, requires therefore the setting up of a dense distribution network, entailing significant costs and time. Such a distribution network could only be used for beverages and would have few alternative uses, since the retailing chains and their associated wholesalers have taken over distribution to their selling points for all other packaged food products. The impact of transport and distribution costs has confined a number of breweries in Norway to a regional dimension, in the sense that they concentrate the bulk of their sales in their home and surrounding districts.

Legal barriers isolating the Norwegian market

- (44) There are a number of regulatory barriers that hinder the development of imports into Norway, and that, in any case, hamper seriously the price competitiveness of imported beer into Norway. These barriers are related to the alcohol legislation and the environmental taxes applied in Norway.

Alcohol legislation

- (45) The basic regulatory texts applicable in Norway are The Alcohol Act of 1989 and the Beer Act of 1912. According to these regulations, sales of beers with an alcohol content by volume (abv) higher than 7 % are prohibited in Norway. Sales of beers with an abv higher than 4,75 % are restricted to the outlets of the AS Vinmonopolet (State Monopoly) and to hotels and restaurants that are licensed to serve these beers. These types of beers cannot be sold in foodstores with the consequence that while beers below 4,75 % abv can potentially be sold in around 5 300 outlets, the Vinmonopolet only has

about 110 sales points. In order to appreciate the effects on possible imports of this legislation, it has to be noted that the typical abv of beers produced in the EU is between 5 and 5,5 %. This fact has been confirmed by both importers of beer into Norway and the leading breweries in the European Union.

- (46) Beers with an abv above 4,75 % (generally imported beers) have therefore traditionally been taxed nearly twice as much as beers below 4,75 % (generally brewed by Norwegian firms). From the figures on prices supplied by the parties, it appears that the tax represents about two-thirds of the manufacturers' prices for a typical bottle of beer, so the effect of the tax is significant as to the price competitiveness of beers produced outside Norway. The tax per bottle of a typical pils will represent around 45 % of the retail price so the tax has an important impact on prices to consumers.
- (47) Sections 8-12 and 9-2 of the Alcohol Act of 1989 prohibit discounts on the sales of beer to consumers and the advertising of beers with an abv above 2,5 %. This has the consequence of severely restricting the introduction of new beers into Norway, since it effectively limits the use of important marketing activities (advertising and promotions on selling points) to induce consumers to switch to new brands.

- (48) Finally, the Beer Act of 1912 requires that all beer sold in Norway shall indicate its tax class on the label, the indication of the alcohol content being insufficient. This further complicates the imports of beers by requiring re-labelling of imported beer.

Environmental legislation

- (49) Bottles that are not re-used or re-filled in Norway (one-way bottles) bear a special tax on the basis of environmental legislation. This tax represents a basic amount of Nkr 0,7 per bottle plus a variable, additional tax of a minimum of Nkr 3 per bottle which is reduced according to the rate of recycling of one-way bottles. Currently this additional tax represents Nkr 1,05 per bottle. Finally, a fee of Nkr 0,08 per bottle is paid to the company carrying out the recycling of glass containers. The total charge for bottles that are not re-used or re-filled in Norway amounts therefore to Nkr 1,83 per bottle, to be compared to a manufacturer's price of around

Nkr 2,5 per bottle of 35 cl excluding taxes. Domestically bottled beer does not bear this environmental tax, since Norwegian brewers have set up a system to collectively recollect and re-use all beer bottles. Cans, the other traditional container for beer, still pay a higher tax, since there is no reduction as yet on the Nkr 3 tax per can. Cans are almost absent from the Norwegian market for beer. They represent an estimated 0,4 % of total consumption in Norway (source: Canadean Report).

Trade flows

- (50) According to the notification, imports are estimated to represent 2,6 % of consumption in Norway in 1994. These imports are concentrated on Class 0 and Class II beers and target the city areas of the south. Statistics of the Confederation des Brasseurs du Marché Commun (CBMC), and the Canadean report show that imports of beer into Norway have remained at below 1 % of consumption in the period 1980 to 1991, and increased to 1,5 % in 1993. Imports have therefore significantly increased in 1994. Market operators attribute this increase to the removal of the purity law in Norway, the removal of the Vinmonopolet monopoly to import beer, and the acceptance in Norway of bottles of standard 33 cl size with the entry into force of the EEA Agreement in 1994. In spite of the significant increase of imports into Norway in this year, imports still remain very low when compared to other countries. In Sweden and in the Community, imports represented around 7 to 8 % of consumption in 1994 (source: Canadean report) and have considerably grown in terms of share of consumption since 1990. According to a Norwegian importer of beer, imports are not likely to increase further unless the legislation is changed in Norway; under the current legislation it estimates imports cannot exceed 2 to 3 % of consumption.

- (51) Similarly there are few exports: Ringnes's beer exports amounted to [...] ⁽¹⁾ of its sales in 1994. Hansa did not make any exports and, as these two companies account for the greater portion of Norwegian production, they can be taken as being indicative of the market as a whole. General sources (The Association of Norwegian Soft-drink Producers and Brewers and the Canadean report)

indicate that exports represent less than 1 % of production.

Negotiations with clients

- (52) Both in the hotel and catering and food retailing markets, the Norwegian suppliers negotiate directly with Norwegian customers. In spite of the progressive internationalization of food retailers, through mergers or alliances, all Norwegian breweries consulted by the Commission in its enquiry have stated that no negotiations, in particular regarding prices and discounts, are carried out directly with the international alliances of retailing chains.

Views of market operators

- (53) Finally, the international brewers together with Norwegian national brewers contacted by the Commission consider that the Norwegian beer market is national in character with the international brewers confirming the above difficulties for import penetration.

Conclusion

- (54) In view of the characteristics of the beer consumed in Norway, the impact of general and specific legislation in Norway affecting beer and bottles, the specificities of distribution of beer in Norway, the negligible trade flows between Norway and other countries, and the views of breweries and importers consulted by the Commission in its enquiry, it is concluded that the Norwegian beer market is national in character.
- (55) To a certain extent, the market in Sweden represents similar characteristics, although it is more open to imports. In any case, since there is no overlap of the parties' activities in Sweden, the only possible competition concerns might arise with respect to Ringnes being a potential entrant in Sweden. Therefore the precise geographic market definition may be left open for the purposes of assessing the present case.

VII. ASSESSMENT

Norway

(a) Overall market position of the parties

- (56) The parties have calculated their market shares, in the relevant product and geographic markets defined above as follows.

⁽¹⁾ Deleted; business secret: < 5 %.

(57)

	1992 Volume (million l)	1993 Volume (million l)	1994 Volume (million l)	1992 Share (%)	1993 Share (%)	1994 Share (%)
Ringnes	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽²⁾	[...] ⁽²⁾	[...] ⁽²⁾
Hansa	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽²⁾	[...] ⁽²⁾	[...] ⁽²⁾
Combined	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽¹⁾	[...] ⁽⁴⁾	[...] ⁽⁴⁾	[...] ⁽⁴⁾

⁽¹⁾ Deleted; business secret.⁽²⁾ Deleted; business secret: between 55 and 65 %.⁽³⁾ Deleted; business secret: < 20 %.⁽⁴⁾ Deleted; business secret: between 70 and 80 %.

(58) In arriving at their calculation of market share the parties have employed the Canadean Report together with data from the Norwegian Soft-Drinks Association and Brewers report adjusted for imports and breweries which are not members of the Association.

(59) The Commission has recalculated this market, in respect of 1994, employing the same sources but also taking into account data supplied by the parties' competitors in Norway. The total market thereby established is some [...]⁽¹⁾ million litres greater which would reduce the parties' combined market share, in 1994, to [...]⁽²⁾.

(b) *Beer sold to food retailers*

(i) *Structure of supply*

(60) The consumption of beer in the take-home segment in Norway in million litres (Canadean report), the parties' sales and their market share can be estimated as follows:

Year	1993 sales	1993 %	1994 sales	1994 %
Consumption	166,2	100	171,0	100
Ringnes sales	[...] ⁽¹⁾	[...] ⁽²⁾	[...] ⁽¹⁾	[...] ⁽²⁾
Hansa sales	[...] ⁽¹⁾	[...] ⁽²⁾	[...] ⁽¹⁾	[...] ⁽²⁾
Combined	[...] ⁽¹⁾	[...] ⁽⁴⁾	[...] ⁽¹⁾	[...] ⁽⁴⁾

⁽¹⁾ Deleted; business secret.⁽²⁾ Deleted; business secret: between 50 and 60 %.⁽³⁾ Deleted; business secret: < 20 %.⁽⁴⁾ Deleted; business secret: between 60 and 70 %.⁽¹⁾ Deleted; business secret.⁽²⁾ Deleted; business secret: between 70 and 80 %.

(61) The main competitors of the parties are Mack, located in Tromsø and with about two-thirds of its sales concentrated in the north of Norway, Christianssand ('CB') located in the County of Agder and concentrating the bulk of its sales in the south of Norway, and Borg and Aass, both located near Oslo and concentrating the bulk of their respective sales in the south east of Norway. All of these competitors have a market share in the retail market below 10 %. Ringnes has several breweries and bottling plants spread over Norway, so its sales of beer are in a strict sense, the only ones being distributed on a national basis. Hansa's plant is located in Bergen, and its beers are distributed mainly on the west coast of Norway.

(62) None of the competitors offer a national brand to compete with Ringnes national brand, and none of them has a national distribution network. Only the Hansa brand is sometimes qualified as a national brand or as an emerging national brand in Norway by food retailers and competitors of the parties.

(63) Norwegian breweries carry significant excess capacity. Brewing capacity can be estimated with a certain accuracy. The parties have submitted in their notification that Moss, CB, Mack, Borg, Aass and Grans carry a combined brewing excess capacity of 90 million litres, representing around 40 % of production in Norway. However, increases in production of beer to be sold to food retailers without incurring significant investment costs are dependent on tank capacity and bottling capacity as well. Bottling capacity is more difficult to estimate, since it can be increased by increasing the number of shifts. Indications by the parties themselves and competitors indicate however, that there is indeed certain excess capacity. It is accepted that there are indications that production of beer in Norway can materially be increased by both the parties and their competitors.

(64) However, it is more doubtful that competitors could increase their production to compete with the merged entity, if for instance, prices were to increase as a result of the proposed merger. There are three basic issues to consider in this respect: the distribution costs, the access to retailers' shelves and the pricing policies followed in the past by the Norwegian brewers.

Distribution costs

(65) The distribution system for beer in Norway has been described above under market definition. The

impact of distribution costs for beer have been estimated by Ringnes as representing approximately [...] ⁽¹⁾ of total costs. For Mack, due to its location, the impact of distribution costs are significantly higher. Answers from other competitors, however, tend to confirm this magnitude of the impact of distribution costs. Distribution costs play therefore a significant role in attaining a competitive price level, the more so since manufacturing technology is fairly standard and all breweries in Norway import their raw materials at similar conditions. Distribution is therefore one of the main areas to compete on prices. In this respect, all competitors have pointed out the importance of volume in order to achieve competitive costs in the transport of beverages. In particular, the combination of sales of cola drinks, with a much higher volume, is considered vital to achieve a competitive distribution for beer. In this respect it has to be noted that the parties will combine a large market share in beer with a large share of CSD sales.

Access to retailers

(66) Access to shelf space has been mentioned by competitors, in particular micro-breweries, as one of the main bottlenecks to gain sales. The conditions of access to retailers' shelves will be discussed in more detail below, but in any case, competitors of the parties have expressed fears that: (i) the financial resources of the merged entity, (ii) its combination of a broad brand portfolio including the only national brands in Norway, certain regional brands and the main foreign brands of beer, (iii) being the main supplier of Coca-Cola products and (iv) offering a large range of other packaged food products to retailers, shelf space availability for competitors can be severely restricted by the merged entity in future.

Pricing of beers

(67) Given the structure of the market after the merger, with the merged entity being much larger than any of its competitors in terms of sales and resources, it is to be expected that other breweries in Norway will tend to focus on their regional markets rather than competing with Ringnes/Hansa. Furthermore,

⁽¹⁾ Deleted; business secret: < 20 %.

an examination of the main brewers' price lists excluding the alcohol tax in the last three years indicates that the breweries concentrating their sales in the Oslo area, have tended to adjust their prices following those of Ringnes, which seems to confirm that their competitive capacity is limited, with the result that prices of the 35 cl pils bottle are aligned for Ringnes, Aass and Borg.

Conclusion

- (68) The parties have submitted that the merged entity will be subject to local competition in all areas. The main reasons argued to support this hypothesis is that local brewers carry excess capacity and that retail chains will seek a second supplier as an alternative to Ringnes/Hansa in Norway, with the result that the overall market share of the merged entity will be lower than the addition of Ringnes and Hansa respective pre-merger market shares. Even if the merged entity would lose some sales as a result of the notified concentration, its market share will certainly remain at a very high level, both in absolute terms and, above all, in relation to its competitors. Furthermore, the evidence gathered during the investigation indicates that it would be difficult for the regional competitors to actually use their space capacity to increase their production and gain sales in competition with the merged entity. In any case, the strong market position of the merged entity would prevent an efficient development of the regional suppliers at a national level. It is concluded that in view of the absolute market shares, the significant gap in terms of sales volumes and market shares between the merged entity and its nearest competitors, the differences in the extension of brand portfolios, and the evidence offered by the pricing of beers in Norway in the recent years, the regional breweries will not be able to exert a significant competitive constraint on the merged entity.

(ii) Countervailing power by food retailers

- (69) The structure of the food retailing sector in Norway is highly concentrated, with the four leading associations of chains (NorgesGruppen, Hakon-Gruppen, NKL-Coop and Rema) accounting for about 97 % of food retailing sales. Each of these groups centralizes the purchases and negotiations with producers

for all the retail chains either owned or associated. Food retailers in Norway are following a policy of vertical integration, by setting-up their own wholesaling operations or establishing tight contractual relations with independent wholesalers. Traditionally, suppliers of groceries in Norway delivered their products to each retail outlet. At present, most of the packaged food products are distributed to the retail outlets by the chains themselves, through their own wholesalers or by independent wholesalers on their behalf. Retail chains have pushed producers to drop their own distribution to the selling points, sometimes against the will of the producers (a recent example is offered by a chocolate manufacturer whose products were delisted until it accepted to deliver to the retailer's wholesaler). Wholesalers consider that their logistics, economies of scale and efficiency allow them to reduce distribution costs by more than 50 %. Beverages, tobacco and fresh food products are the only categories of products where the suppliers remain in charge of deliveries to each selling point. Market sources attribute the exception for beverages to the returnable system arising from the environmental taxation for bottles, which has been explained above under geographic market definition.

- (70) The parties have submitted that the retail chains dominate the market for beverages, since their high degree of concentration and their progressive vertical integration provides them with strong negotiating tools. Furthermore, their position would be reinforced by their association with international alliances of retailers, such as NAF International (NKL/Coop), the AMS Alliance (Hakon-Gruppen) or by transnational acquisitions (the Swedish retailer ICA has an important capital stake in Hakon-Gruppen). The two other main chains, Rema and NorgesGruppen, are negotiating to enter into international alliances/cooperation, and ICA-Hakon-Gruppen participates in a Viking Retail alliance with the Finnish retailer Kesko.

- (71) The main negotiating tools that, according to the parties, allow the retailers to have a sufficient countervailing power are de-listing or shielding of certain products, their control of promotion programmes and activities at the selling points and the introduction of private labels.

International Alliances

- (72) The Commission enquiry has found little supporting evidence that international alliances of retailers currently play a significant role in the Norwegian beer market. The parties have confirmed that at present, they do not carry out any direct negotiations for beverages with international alliances of retailers and this has been further confirmed by all market operators contacted by the Commission during its enquiries. If it is a fact that retailers are progressively associating with retailers in other countries, the functions and objectives of these alliances are very different depending on the particular alliance and generally there are no significant examples of centralized purchasing. In particular, given the specificities of the beer market in Norway (low adv, importance of national brands, lack of trade flows, and in particular virtual absence of exports) it does not seem reasonable to anticipate a change in the current situation leading to an effective influence of international alliances in the Norwegian beer market from the point of view of prices, product ranges and conditions of supply of beer to Norwegian retailers.

Negotiating tools

- (73) The parties have supplied certain examples of delisting or shielding of food products by Norwegian or Swedish food retailers. As to delistings in Norway, they have presented three examples. The first one concerns a chocolate manufacturer, whose product range was partially delisted by all four retailers as it refused to allow wholesalers to carry out the distribution of its products. It is worth noting however, that the Norwegian retailers had at least an alternative supplier of chocolate products who had agreed to change its distribution policy. As to examples in the beer market, in particular regarding the parties' products, two examples are offered: (i) the delisting of the [...] ⁽¹⁾ brand in most of the stores of [...] ⁽¹⁾, a chain belonging to the [...] ⁽¹⁾ focusing on a 'discounter' concept, and the further reduction of shelf space for [...] ⁽¹⁾ brands, (ii) the delisting and shielding of [...] ⁽¹⁾ brands in [...] ⁽¹⁾, a chain belonging to [...] ⁽¹⁾. Although a certain margin of negotiation for retailers cannot be totally denied, it has to be noted that the two examples of delisting/shielding are limited in scope. [...] ⁽¹⁾ is an [...] ⁽¹⁾ beer, a segment that represents a very small part of consumption in Norway (around [...] ⁽²⁾ of consumption). Sales of [...] ⁽¹⁾ amounted to [...] ⁽¹⁾ million litres in 1994, representing a negligible proportion of Ringnes total sales of beer

([...] ⁽¹⁾ million litres). Furthermore, the examples show that delisting/shielding is done at the level of each individual sub-chain belonging to the retailer's group, not at a centralized level. The four firm concentration ratio therefore overstates the strength of retailers in this respect. Furthermore, it has to be noted that, unlike in other countries where the retailers' organizations are more integrated, listing fees or payments to purchase shelf space are not current practice in the Norwegian market for beer, as indicated by all suppliers approached by the Commission during its investigation.

- (74) If delisting/shielding of brands can be regarded as extreme measures, retailers have certain control over the exposure of products in the selling points, and of promotions. Promotions do not play a major role in beer, since price discounts to the final consumers are legally prohibited for beer containing alcohol. Alcohol-free beer can be offered at discounted prices to consumers, but the low volume of this segment makes it unattractive. The discounts for activities or promotions on the sales points without price reductions for consumers have started to be used in Norway recently, but still seem to play a very limited role. Agreements between Ringnes and retailers regarding promotions, brand selection, merchandizing and volume for beer result in a total discount representing [...] ⁽²⁾ of the list prices. These discounts have been introduced in 1994. As a comparison, discounts offered to retailers for these activities in the CSD sector represent around [...] ⁽²⁾ of the list prices, and have been increasing significantly in the last five years. This reflects the difference in strategic importance for retailers between beer and colas. In particular, colas are an important parameter in competition among retailers, since they attract customers to the stores (so-called traffic builders in Norway). This does not happen to that extent with respect to beers, where in any case, retailers have a lesser margin of manoeuvre because of the legislation regarding alcohol, in particular the prohibition to offer discounts to their clients.
- (75) In general, private labels have been comparatively slow in their introduction in Norway. According to a report prepared by NERA for the parties, private label penetration in Norway represents 5 % of sales, to be compared with a European average of 12 %, and rates as high as 47 % in Switzerland, 37 % in the United Kingdom and 16 % in France. In addition, the estimated discount of private labels in Norway relative to proprietary brands is among

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⁽³⁾ Deleted; business secret: < 20 %.

the lowest in Europe, at an estimated 9 %, to be compared with discounts as high as 36 % in Switzerland, 30 % in Germany, 22 % in France and 17 % in the United Kingdom. With respect to beers, there are no private labels at present in Norway, and the prospects for their introduction are affected by the general policy in Norway to restrict alcohol sales. In other non-alcoholic beverage markets private labels have started to appear very recently. The main private label is a cola introduced by the Hakon-Gruppen in February 1995. There is an example also for a bottled water introduced in the same month by Coop.

Conclusion

- (76) In spite of the apparent high concentration of the retail chains, the structure of food retailing seems to present important differences in Norway when compared to other European countries. Beer plays a relatively smaller role in the competition among retailers. Even if retailers have a strong bargaining position and they would try to obtain better terms and discounts than their competitors, it is less clear that they would have an interest in preventing general price increases through list prices. The low level of discounts in beer, the reduced scope for promotions of beer at selling points, the absence of listing fees, and the absence of private labels indicate that the countervailing power of retailers is not playing a significant role in this market. Moreover, food retailers could exert countervailing power if they would have at least an alternative supplier to which they could switch their orders. Food retailers contacted by the Commission have indicated that imports are not a practical alternative as long as the environment tax is in force in Norway. It also has to be noted that the merged entity will be the only nation-wide supplier of beer. The more retailers integrate their purchasing and marketing functions, the more they will depend on a brewery with nationwide distribution networks and brands. It has to be noted in this respect that the disappearance of Hansa as a competitor of Ringnes removes the main brewery with a potential to become a national player in Norway, either through cooperation or through merger with smaller breweries located in complementary regions.

- (77) It is concluded that there are no sufficiently clear indications that the strong position of the merged

entity in the Norwegian beer market is likely to be constrained by the food retailers.

(iii) Potential competition and entry

- (78) The parties have identified in their notification a number of ways in which entry could take place into the Norwegian beer market. They indicate in their notification first the possibility of acquisition, with the examples of the Swedish brewer Spendrups acquiring CB in 1991 or Pripps acquiring Hansa in the same year. Examples of new entry are provided by Tromi, a CSD producer who entered the beer market in 1993, and currently has a [...] ⁽¹⁾ share in the city of Trondheim, with sales of around [...] ⁽²⁾ million litres of its own beer and a small amount of sales of Hansa beer. Tromi complemented its CDS business with the distribution of beer from Mack, Hansa and Tou in mid and northern Norway. Tromi entered into production of beer when the distributorships with Mack and Tou were terminated, in order to keep its beer sales. Other examples of entry are provided by micro-breweries, that address a niche market for specialty premium beers. Oslo Bryggerikompani is one such example, with current sales of around 700 000 litres and a market share of 1 to 2 % in Oslo. The strategy and resources of these companies do not allow them to adopt a volume-based policy.
- (79) Even if transport costs are significant for bottled beer, distances from certain European countries to Oslo are shorter than distances within Norway. The parties argue that transport costs do not disadvantage imports of beer. However, the difficulties associated with imports of bottled beer into Norway have already been pointed out. In particular it has to be noted that one-way bottles cannot compete on price with the returnable bottles. Differences in abv and brands are additional factors. Even if these factors together would not completely remove the possibility to import bottled beer into Norway, they certainly hinder their competitiveness in the volume-oriented market of Ringnes' and Hansa's best selling products. The environmental tax could be avoided if beer is imported in tanks or barrels and then is bottled in Norway. This is done for instance by Hansa with its alcohol-free beer Claus-

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⁽²⁾ Deleted; business secret.

thaler. Yet, an entrant following this route to compete in the volume pils market would still suffer the cost disadvantage of transporting bulk beer relative to the established breweries in Norway. More importantly, it would still be subject to the barriers indicated above under geographic market definition (alcohol legislation, commercial barriers).

(80) Licensing of foreign brands to Norwegian suppliers is another way of entering the market. This has been already done by companies such as Carlsberg (Carlsberg and Tuborg brands), Heineken and Guinness. All these brands have been licensed either to Ringnes or Hansa, which offer the largest potential market to a foreign supplier. Moreover, these brands enjoy collectively a very small share (around 5 %) of the Norwegian market. Usually, foreign brands, even when they have an abv below 4,75 % sell at a premium over the domestic pils beers.

(81) The parties have pointed out that the Norwegian beer market will grow in the next two to three years at higher rates when compared with other European countries; also consumption per capita is relatively lower in Norway. However, the relatively small size of the Norwegian market, its heavy regulation and the high level of taxes make it in principle unattractive as a market for entry. Furthermore, the restrictions on advertising and discounts of prices to consumers remove the effect of consolidating established positions, and hinder the development of a new entrant. Most large breweries outside Norway contacted by the Commission indicated that they do not currently have specific plans to enter the Norwegian market above existing levels.

Conclusion

(82) Although it is not possible to exclude completely entry in a market with absolute certainty, in particular when there are large export-orientated companies outside the relevant geographic market, the market structure described so far and the evidence available to the Commission indicate that entry at a competitive level is not likely to erode the parties' position in the foreseeable future. Furthermore, the Commission has not found any concrete indications of plans to enter this market. Therefore, and more importantly, the mere threat of entry does not seem to be credible enough so as to conclude to the contestability of the Norwegian beer market.

(iv) Overall assessment

(83) For the reasons outlined above, it appears that the notified transaction further increases the concentration of supply in an already concentrated market.

There are several indications that it will lead to a situation where the merged entity could act in the retailing beer market independently of the competitive constraints prevailing in less concentrated markets. By the proposed transaction, Ringnes reinforces its strong position on the Norwegian beer market, and practically removes the possibility that another national supplier develops in it.

(84) The proposed concentration therefore creates a dominant position as a result of which effective competition would be significantly impeded in the Norwegian market for sales of beer through food retailers.

(c) Beer sold to the hotel and catering industry

(i) Structure of the industry

(85) The Norwegian hotel and catering industry is largely fragmented with, at the end of 1993, 4 793 (source: Statistisk Sentralbyrå) separate sales outlets, licensed for the serving of beers, in the form of hotels, restaurants, bars, etc. These outlets are granted licences based on Chapter 4 of the Alcohol Act 1989. Accordingly about 56 % of the establishments are licensed to sell a full range of beers including those between 4,75 % abv and 7 % abv being the upper legal limit on sales of either domestic or imported beers in Norway.

(86) There are a few exceptions to this general fragmentation in that a number of either national or regional hotel chains have been established; however it should be noted that the combined beer sales of, for example, SAS International Hotels A/S and Rica Hotell-og Restaurantkjede AS accounted for only some [...] (!) of the total beer sales by the hotel and catering industry in 1994. A further example is that of McDonald's Norge A/S, which only sells Class A (alcohol free) beer. The total sales of this beer amounted to some 8,4 million litres in total in 1994. On the assumption that the ratio of retail/hotel and catering industry sales applies equally to such beers an estimated total of 2,1 million litres were sold in total by the whole hotel and catering industry in 1994 being some 3 % of total sales.

(87) The hotel chains noted above have stated that currently there are only three breweries in Norway which are capable of meeting their requirements of national coverage, these being Ringnes, Hansa and Mack. However Mack is handicapped by the fact that it is located in the far north of Norway, in Tromsø, meaning that national distribution is difficult given the logistics of transporting beverages

(!) Deleted; business secret: < 5 %.

over long distances. The fact that 11 % of the Norwegian population lives in Oslo, and 31 % in the Oslo fjord area, should also be noted in this respect. Furthermore this area accounts for some 4 % of the total area of Norway.

- (88) Consequently the hotel chains are concerned that should Ringnes and Hansa be combined in BCP-JV their choice of supplier would be limited to either that of BCP-JV or Mack. Given the hotels' reluctance to carry high stock levels, their preference for frequent deliveries (two or three times a week) and their wish for a wide and timely geographic coverage for their deliveries means that it is unlikely that Mack alone (as Mack is currently cooperating with Hansa to supply Rica Hotels, an agreement that will lapse should Hansa enter BCP-JV) could, at least in the short term, fulfil these requirements completely. Therefore the establishment of BCP-JV would limit the choice of the hotel industry to one supplier only.
- (89) The position of Ringnes and Hansa as major suppliers to the hotel and catering industry must also be noted. Based on consumption figures for beer calculated by the Canadean Report and to sales data submitted by the parties and competitors it is clear that Ringnes was the major supplier to the industry in 1994 with some [...] ⁽¹⁾ of the market. By adding Hansa's sales to those of Ringnes the combined market share of these two companies increases to [...] ⁽²⁾ in respect of 1994. It is believed that the companies' market shares were of a similar magnitude in 1993.
- (90) Therefore it appears that Ringnes held a major part of the market before the proposed establishment of the joint venture; its establishment would serve to strengthen the market position of the parties.

Competitors

- (91) There are a number of smaller competitors, to the parties, who supply beer to the hotel and catering industry. In addition to Mack noted above the more important of these are Aass, Borg and CB. These companies have indicated that they each supply an estimated one to six million litres of beer to the industry per annum.
- (92) Each of these breweries makes sales in the greater Oslo area and CB and Mack are also present in more than 50 % of the Norwegian counties. By way of comparison both Ringnes and Hansa

operate in Oslo and Ringnes is present in all but one of the counties and Hansa in 67 % thereof.

- (93) Consequently it would appear that competitors to Ringnes and Hansa are not in a position to be able to compete given their smaller volume of sales and more limited geographic coverage.

Tie-in of existing customers

- (94) The parties have submitted that their distribution agreements with the hotel and catering industry, in respect of Ringnes last [...] ⁽³⁾. For Hansa agreements last, in general, [...] ⁽³⁾.
- (95) The Commission has been supplied with a copy of a 'standard' Ringnes supply agreement which indicates that [...] ⁽³⁾. The 'standard' agreement lasts for [...] ⁽³⁾ years. This [...] ⁽³⁾ has been confirmed by a customer, based in Oslo, who attempted to introduce keg beer from a small, local brewery.
- (96) Ringnes does have a very strong position as regards beer supplies in the Oslo area because it is the sole permitted supplier of some CSDs (such as Coca-Cola) in the region. This would indicate that bars or restaurants that wish to be supplied with Coca-Cola should also take Ringnes beer.
- (97) Furthermore, since the ending, in 1987, of the regional division of sales and distribution among the various breweries, they have provided finance, either in the form of loans or bank guarantees, for the establishment and modernization of premises. In addition equipment in the form of refrigerators, furniture, etc. is also provided.
- (98) The provision of finance ensures the loyalty of an outlet to one brewery; the provision of refrigerators would appear to be limiting the possibility of second suppliers to source bars with bottled beers. The Commission has been informed, by beverage importers, that Ringnes has tried and succeeded in refusing access to its refrigerators, for their imported beers, effectively excluding them from certain outlets.
- (99) As noted above Ringnes already controls a major part of the sales to the hotel and catering industry: by the introduction of long-term, exclusive draught beer agreements and by the attempted limiting of sales of bottled beer in the hotel and catering industry it can effectively limit potential new entrants to the industry.

⁽¹⁾ Deleted; business secret: between 60 and 70 %.

⁽²⁾ Deleted; business secret: between 70 and 80 %.

⁽³⁾ Deleted; business secret.

Prices

(100) The Commission has undertaken an analysis of recent price movements in respect of the sales prices of the best selling draught beers (in terms of volume) to the hotel and catering industry. This analysis indicates that there is negligible competition between the breweries in terms of list prices for their best selling brands of draught beer to the hotel and catering industry. In addition it has been stated by several smaller breweries that they follow increases in the list prices set by the market leader Ringnes.

(101) Accordingly, based on this analysis it would appear that Ringnes has a sufficient market presence to influence the prices of its smaller competitors, a situation that is likely to be exacerbated should it be combined with Hansa.

Countervailing market power

(102) As stated above there are few extensive hotel or catering chains in Norway that would be able to limit the market power of the BCP-JV. Consequently it is not considered that there would be any countervailing market power by the hotel and catering industry to be able to offset the effect of the establishment of BCP-JV.

(ii) Potential competition

(103) The parties have argued that a new supplier, for the hotel and catering industry, could enter the market thereby limiting the effects of BCP-JV's market presence. Such supplies could either be in the form of bottled or draught beers and the latter could be made available either in kegs or in tanks for bottling in Norway.

(104) Imports of beer into Norway amounted to 6,4 million litres in 1994 an increase of 52 % on the previous year and of 33 % in comparison to 1992. It should be noted that these percentage increases are exaggerated due to the low volumes of imports. It is probable that, given the premium nature of such beers, a greater proportion than the national average of 25 % of such beers are consumed by the hotel and catering industry. However, on the assumption that 50 % of imported beers are consumed by the hotel and catering industry, (the West European average for total consumption for 1994 being 48,7 % according to the Canadean Report) this volume amounts to some 5 % of total consumption by the hotel and catering industry.

(105) It is admitted that the volume of imports is likely to grow: the Canadean Report foresees growth of 6,8 % between 1994 and 1995 and of 64 % between 1995 and 1997. However it should also be noted that there is a discrepancy between the import figure of 6,4 million litres provided by the Association of Norwegian Soft-Drink Producers and Brewers and the 3,7 million litres of imports noted by the Canadean Report for 1994. Consequently these growth rates should be treated with caution.

(106) However the problems, identified below, facing existing and potential importers cannot be underestimated.

— *recycling*: in order to benefit from a reduction in the environment tax, from Nkr 3,0 and the basic tax of Nkr 0,7 to a lower level, an importer would have to establish a recycling system for bottles. At present two systems operate: one concerning refillable, returnable bottles, which is used by the domestic brewers, which ensures that the whole of the environment tax is recovered by the ultimate consumer. Another system concerns non-refillable, returnable bottles, being principally those which are imported, allows a reduction of 65 % in the environment tax. Consequently imported bottled beers automatically suffer a Nkr 1,83 tax difference being the basic tax of Nkr 0,70, environment tax of Nkr 1,05 and a recycling payment of Nkr 0,08 which is not paid by domestic brewers.

Importers could avoid this tax by bottling the beer, imported by way of tank, in 'standard' Norwegian bottles (which is in fact completed by Hansa for Clausthaler). However this would mean either building a new bottling plant or leasing existing spare capacity and having access to the domestic brewers' return system. Alternatively beer could be imported by way of keg but again the importer would have to establish a method for the distribution and the return of the keg from the bar or restaurant to its country of origin. Contact with the catering industry has indicated that such a proposal would be improbable,

— *fiscal differences*: historically beer of between 2,5 % abv and 4,75 % abv has accounted for the major part of Norwegian consumption (an estimated 90 % in 1994). With effect from 1 January 1995 beer stronger than 4,75 % abv and less than 5,75 % abv bears excise duty at Nkr 18,16 per litre being a rate 42 % higher than beer of 4,75 % abv. As most international

beers imported into Norway have an alcohol content in excess of 4,75 % abv (e.g. bottled Guinness with 5 % abv; Hoegaarden 4,9 % abv) it is apparent that they suffer a significant duty disadvantage in comparison to domestic brands,

— *outlet licensing*: in order to be able to sell beer greater than 4,75 % abv (being largely imported beers) bars etc. are required to hold an additional licence. Only some 56 % of all bars hold such licences thereby excluding a number of outlets from purchasing, for supply, stronger beers. The possible market for importers is accordingly reduced,

— *tie-in of existing customers*: as noted above there would appear to be a considerable barrier to the introduction of both draught and bottled beer in bars already supplied by Ringnes. Therefore it is unlikely that either forms of imported beer could be easily introduced in the future.

(107) For the above reasons, it is unlikely that a significant growth in the level of imports will be achieved.

(108) The parties have also indicated other possible means by which potential competitors could enter the Norwegian market:

— *brewing under licence*: it should be noted that Ringnes and Hansa already hold licences for brewing Tuborg, Carlsberg and Heineken and for the distribution of Guinness. Therefore the only other international European brands that could wish to enter the market are considered to be either Interbrew SA or Brasseries Kronenbourg; in addition there are also Australian or American companies that may wish to enter the market. However the size of the market needs to be considered. Total sales of the above licensed brands amounted to some 10 million litres in 1994 some 4 % of the total beer

market. Therefore there would appear to be little commercial incentive for the licensing of new beer products,

— *establishment of a new brewery*: the Commission is aware of two such examples which together produce less than two million litres (less than 1 % of the total market for beer). Consequently whilst there will always be a niche role for such operators it is improbable that they would present a serious threat to BCP-JV's position.

(iii) Overall assessment

(109) On the basis of the above factors it is apparent that Ringnes already holds a significant share of the hotel and catering industry beer market. Given the fact that existing customers can be tied-in to Ringnes's supplies, to the detriment of other suppliers; that there would seem to be negligible countervailing market pressure and that there is little chance for market entry either by way of import or the establishment of a new business, the addition of Hansa to Ringnes would serve to consolidate this market presence.

(110) As has been noted by several customers the only current national alternative to Ringnes is Hansa; the establishment of BCP-JV would eliminate this choice.

(111) The proposed concentration therefore creates a dominant position as a result of which effective competition would be significantly impeded in the Norwegian market for sales of beer through the hotel and catering industry.

Sweden

(112) The Commission has considered the market position of Pripps in Sweden as regards beer: the market shares are set out in the following table, the sources for which were the Canadian Report (all volumes are in millions of litres):

	1992 Volume	1993 Volume	1994 Volume	1992 Share	1993 Share	1994 Share
Beer	[...](⁽¹⁾)	[...](⁽¹⁾)	[...](⁽¹⁾)	[...](⁽²⁾)	[...](⁽²⁾)	[...](⁽²⁾)

(⁽¹⁾) Deleted; business secret.

(⁽²⁾) Deleted; business secret: between 40 and 50 %.

- (113) The market share of Falcon ([...]⁽¹⁾) in 1994 has not been taken into account in the above table. This is because Volvo, on the basis of an undertaking given to the Stockholm District Court in October 1994, is to refrain from pursuing the integration of Pripps and Falcon. Moreover, it is indicated in Volvo's strategic plan that Falcon will be sold within the next few years as the Volvo Group wishes to return to its core vehicle activities. Finally, it should be noted that the undertaking is backed by a penalty fine of SKr 50 million (ECU 5,5 million) should the undertaking be countermanded.
- (114) The establishment of BCP-JV does not add to these market shares given the fact that neither Ringnes nor Hansa operate in Sweden. This is further supported by the national nature of the markets and the fact that imports of beer into Sweden from Norway, are negligible. Such imports amounted to 0,76 million litres of beer in 1994, a negligible amount in comparison to total consumption.
- (115) It has to be recalled that there are presently three major operators in the Swedish market being Pripps [...]⁽²⁾, Falcon [...]⁽¹⁾ and Spendrups Bryggeri AB [...]⁽¹⁾. In view of the high concentration of beer supply in Sweden, the Commission has examined whether the notified transaction might have the result of removing a potential competitor.
- (116) Ringnes's largest brewery is located in Oslo which is the brewery located closest to the more highly populated areas of Sweden. This brewery is currently running at [...]⁽³⁾ brew capacity and [...]⁽³⁾ bottling capacity. [...]⁽⁴⁾.
- (117) Furthermore, there is a large number of international large brewers who would be in the same, if not better position than Ringnes to enter the Swedish market.
- (118) The Commission has therefore concluded that the creation of BCP-JV does not raise any problems of competition in respect of the merger regulation in Sweden.

VIII. CONCLUSION

- (119) For the reasons outlined above, it appears that the notified transaction further increases the concentra-

tion of supply in an already concentrated market and that this will lead to a situation where the merged entity could act in the Norwegian beer markets independently of competitive constraints.

- (120) The proposed concentration therefore creates a dominant position as a result of which effective competition would be significantly impeded in the Norwegian market for sales of beer through the retail industry and the hotel and catering industry.
- (121) Consequently, the proposed concentration would lead to the creation or strengthening of a dominant position through which effective competition in a substantial part of the territory covered by the EEA Agreement would be significantly impeded.
- (122) As to the effects of the concentration in Sweden, the Commission has not identified any creation or reinforcement of a dominant position.

IX. COMMITMENTS PROPOSED BY THE PARTIES

- (123) The parties have offered to modify the original concentration plan as notified by entering into the following commitments:

'Orkla AS and AB Fortos (hereinafter referred to as the "Parties") hereby give the following undertaking (hereinafter referred to as the "Undertaking"), on their own behalf and on behalf of their respective group of companies, to the Commission with respect to the beer business of Hansa Bryggeri A/S (hereinafter referred to as "Hansa") comprising [...]⁽⁴⁾ (hereinafter referred to as the "Business"). The Business shall be sold as an ongoing concern.

1. The Parties shall within [...]⁽⁴⁾ from the date of the Commission's decision clearing the concentration subject to the fulfilment of this Undertaking have found a purchaser for the Business, it being understood that such purchaser shall be a viable existing or potential competitor or financial or industrial company or institution independent of the Parties or BCP-JV and with the financial capacity to continue the Business.

The Parties shall be deemed to have complied with this undertaking if BCP-JV has within this period entered into a binding letter of intent for the sale of the Business subject to due diligence and other conditions [...]⁽⁴⁾ beyond the Parties' control, provided that a final agreement for such sale has been concluded within [...]⁽⁴⁾ from the date of the letter of intent.

⁽¹⁾ Deleted; business secret: < 20 %.

⁽²⁾ Deleted; business secret: between 40 and 50 %.

⁽³⁾ Deleted; business secret: between 90 and 100 %.

⁽⁴⁾ Deleted; business secret.

2. If the Parties are not able to fulfil their undertaking to divest by the end of the period set out in 1 above, the time limit shall be extended by a period of [...](!) upon request by the Parties accompanied by a written motivation for such extension showing best efforts to fulfil their Undertaking and on condition that the Parties shall prior to such extension appoint an independent firm of accountants, law firm or investment bank or similar consultancy firm (hereinafter referred to as the "Trustee"), to be approved by the Commission, to act on the Commission's behalf in overseeing the ongoing independent and separate management of the Business and the continued efforts by the Parties to divest.

The Trustee shall be remunerated by the Parties.

Should divestiture according to 1 above not have been accomplished by the end of the extension period, the parties shall give the Trustee an irrevocable mandate to find a purchaser for the Business and to sell the Business, on best possible terms and conditions within an additional extension period of [...](!). The Parties shall provide the Trustee with all assistance and information necessary for the execution of such sale and for the obtaining of the best possible conditions subject to the Parties' reasonable secrecy interests.

3. Prior to the sale of the Business to a third party, the Parties shall hold separate the Business from the businesses of BCP-JV and the Parties. Structural changes of the Business until such date shall not be undertaken by the Parties until two weeks after the Parties have informed the Commission and the Commission has not explicitly opposed such change.

The Parties shall further ensure that the Business is managed separately from BCP-JV and the Parties with its own management. The Parties shall replace those members of the board of directors of Hansa who belong to the board of directors or the management of BCP-JV. The Parties shall not appoint or second employees from the Parties or BCP-JV as management of

Hansa until the Business has been divested. The board of directors and the management of Hansa shall make best efforts to keep the value of the Business until its divestiture.

The Parties shall finally see to it that BCP-JV does not obtain any business secrets relating to the Business.

4. The Parties or the Trustee, as the case may be, shall report to the Commission in writing before a letter of intent is to be signed and in any event every four months on relevant developments in their negotiations with third parties.

If, within [...](!) from the receipt of a report indicating a purchaser with whom the Parties or the Trustee propose to sign a letter of intent, the Commission does not formally indicate its disagreement with the choice of purchaser with due regard to the qualifications set out in 1 above, the sale to such purchaser shall be free to proceed.

The Commission shall be given, for the purpose of information only, copies of prospectuses or similar written documentation provided by the Parties to relevant purchasers of the Business.'

- (124) The Commission is satisfied that the parties' undertaking to divest the beer business of Hansa in its entirety addresses the competition concerns outlined above. The divestiture of the beer business of Hansa effectively implies that there will be no further concentration of the supply in the relevant markets arising from the notified operation, and no addition of sales and market shares to the pre-concentration position of Ringnes in Norway,

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified by AB Fortos and Orkla AS on 18 April 1995, relating to the creation of BCP-JV, is declared compatible with the common market and the

(!) Deleted; business secret.

functioning of the EEA Agreement subject to the condition of full compliance with the commitments made by the parties, in their undertaking to the Commission in respect of the Hansa beer business, as set out in recital 123 of this Decision.

AB Fortos
Norra Bankogränd 2
Box 2278
S-103 17 Stockholm.

Article 2

This Decision is addressed to:

Orkla AS
PO Box 308
N-1324 Lysaker
and

Done at Brussels, 20 September 1995.

For the Commission
Karel VAN MIERT
Member of the Commission
