

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 December 1999

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

(Case No IV/M.1578 — Sanitec/Sphinx)

(notified under document number C(1999) 4005)

(Only the English text is authentic)

(Text with EEA relevance)

(2000/718/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

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

Having regard to the Commission decision of 3 August 1999 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission⁽³⁾,

Having regard to the opinion of the Advisory Committee on Concentrations⁽⁴⁾,

- (1) On 1 July 1999, the Commission received a notification of a proposed concentration whereby the Finnish undertaking Sanitec Ltd Oyj Abp ('Sanitec'), belonging to the Finnish industrial group Metra, acquires control within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 ('the Merger Regulation') of the Dutch undertaking NV Koninklijke Sphinx Gustavsberg ('Sphinx') by way of a public bid.
- (2) After examination of the notification, the Commission concluded by decision of 3 August 1999 that the notified operation falls within the scope of the Merger Regulation and raises serious doubts as to its compatibility with the common market. The Commission therefore decided to initiate proceedings in application of Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

I. THE PARTIES

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

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ Sanitec has refrained from replying to the Commission's Statement of Objections. The Commission therefore considers that Sanitec is in agreement with the Commission's analysis set out in the Statement of Objections.

⁽⁴⁾ OJ C 331, 22.11.2000.

- (3) Sanitec is active in the design production and marketing of bathroom products. The Group has three core businesses: bathroom ceramics, bath and shower related products and vacuum toilet systems. Sanitec is active in the Community, central Europe, the Middle East, south-east Asia and North America. Its best known

brands are Ido, Ifö, Porgsgrund and Scandispa (Scandinavia), Allia (France), Keramag (Germany), Albatros, Revita and Pozzi-Ginori ('Pozzi') (Italy) and Lecico (the United Kingdom). Sanitec is a wholly owned subsidiary of the Metra industrial group.

- (4) Sphinx is also active in the design, production and marketing of bathroom products, in particular, in ceramic sanitary ware, shower enclosures, bathtubs and taps. Sphinx is active in the Community and eastern Europe. Its best known brands are Sphinx, Gustavsberg, Selles, Koralle, Leda and Vårgårda.

II. THE OPERATION

- (5) On 3 June 1999, Sanitec made a public offer for all outstanding ordinary shares not held by the Stichting Administratiekantoor Aandelen NV Koninklijke Sphinx Gustavsberg ('the Foundation') and all the depositary receipts of ordinary shares in Sphinx. Thus, the offer covers all shares in Sphinx. Given that the depositary receipts of shares are held by the Foundation and that, according to Dutch law, the voting rights of the shares in Sphinx can only be exercised by the Foundation, Sanitec will take control over all controlling bodies in Sphinx as well as the Foundation and thus ensure control over Sphinx.

- (6) The offer memorandum was posted to the shareholders on 17 June 1999 and has the support of the Supervisory Board and the Managing Board of Sphinx. The offer covers the whole Sphinx Group and it is envisaged that Sphinx will become the wholly owned subsidiary of Sanitec.

III. CONCENTRATION

- (7) If the public offer succeeds, Sanitec will acquire sole control of Sphinx. The operation is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

- (8) The combined aggregate worldwide turnover of the undertakings concerned exceeded EUR 2 500 million in 1998 (Sanitec/Metra: EUR 2 603 million; Sphinx: EUR 270 million). The combined aggregate turnover of the undertakings concerned was more than EUR 100 million

in each of at least three Member States in which each of those undertakings had an aggregate turnover of more than EUR 25 million, in [...] (* Sanitec/Metra: EUR [...] million; Sphinx: EUR [...] million), in [...] (* Sanitec/Metra: EUR [...] million; Sphinx: EUR [...] million), in [...] (* Sanitec/Metra: EUR [...] million; Sphinx: EUR [...] million) and in [...] (* Sanitec/Metra: EUR [...] million; Sphinx: EUR [...] million). The aggregate Community-wide turnover of each of the undertakings concerned was more than EUR 100 million (Sanitec/Metra: EUR [...] million; Sphinx: EUR [...] million). Furthermore, the undertakings concerned did not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(3) of the Merger Regulation. It constitutes a cooperation case pursuant to Article 57(2)(a) of the EEA Agreement and Article 2(1)(c) of Protocol 24 to that Agreement and therefore the case has been assessed by the Commission in cooperation with the EFTA Surveillance Authority in accordance with Article 58 of the EEA Agreement.

V. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

1. Market definition proposed by Sanitec

- (9) Sanitec has submitted that bathroom products may be divided into the following 12 relevant product markets: (i) bathtubs; (ii) shower trays; (iii) shower screens, enclosures and cubicles ('shower screens'); (iv) sanitary taps and mixers; (v) washbasins; (vi) sinks; (vii) water closets ('WCs'); (viii) vacuum and non-vacuum systems for aircraft, trains and ships; (ix) WC cisterns and flushing systems ('WC cisterns'); (x) hydrotherapy products; (xi) bathroom furniture and (xii) other products, including WC-seats, bidets, urinals, pedestals and accessories.
- (10) Sanitec argues that an additional segmentation, by price levels (i.e. high-end and low-end products) or material used for the production of bathroom products, within each of the suggested product markets is neither necessary nor feasible because all major manufacturers of bathroom products produce or trade products across the whole price range and thus substitution can easily take place from a supply-side point of view. Sanitec argues further that there are multiple overlaps of price ranges among the suppliers of bathroom products and it is therefore the view of Sanitec that the relevant product markets are defined most adequately from the consumer's point of view.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(11) While Sanitec and Sphinx have overlapping activities in most of the abovementioned product markets, it is only the following markets which are horizontally affected by the concentration (i.e. the parties have a combined market share above 15%): washbasins, WCs, WC cisterns, bathtubs, shower trays and shower screens.

(a) *Washbasins*

(12) Sanitec submits that the market for washbasins comprises both ceramic and non-ceramic (acrylic and steel) products. Sanitec has argued that washbasins made out of different materials fulfil the same needs for consumers and that the characteristics and prices are the same. Thus, Sanitec considers that washbasins made of different materials are substitutes for one another. In its notification Sanitec estimates that, at the EEA-wide level, [$<95\%$]* of washbasins are made of ceramic and [$<15\%$]* of non-ceramic material.

(b) *WCs*

(13) According to Sanitec, the main type of toilet is the water-flushed vitreous ceramic model. There are a number of different arrangements for WC pans: they can be either pedestal or affixed to the wall. In addition, they may be used with a high or low level cistern as well as with a cistern or flushing valve concealed in or behind the wall. Sanitec contends that there are no substituting products for WCs which are only made of ceramic materials. Urinals complement WCs but do not substitute them. In any event, the sales volume of urinals is negligible.

(c) *WC cisterns*

(14) Sanitec submits that there are two principal solutions for the flushing of conventional WCs: an exposed or concealed flushing mechanism inside the cistern or a special self-closing tap triggering a water-pressured flush. Sanitec contends that cisterns made of different materials are substitutes for one another given that customers' preferences do not relate to material but only to function (which is fulfilled by all the materials), design (which does not depend upon material) and prices. Furthermore, Sanitec submits that, at the EEA-wide level, [$<70\%$]* of all WC cisterns are made of non-ceramic materials and the rest of ceramic material.

(15) While recognising that WCs and WC cisterns are used together, Sanitec submits that they are often bought separately and that WC cisterns should thus be considered as a distinct product market from WCs.

(d) *Bathtubs*

(16) Sanitec contends that bathtubs made of synthetic materials, cast iron or steel serve the same purpose from the demand-side point of view and are substitutes for one another. Although average prices differ for each kind of material, the price ranges of the different materials overlap considerably and Sanitec thus considers that the different kinds of bathtub constitute substitutes. According to Sanitec, the split between the sales of different types of bathtub is as follows: [$<50\%$]* synthetic materials, [$<60\%$]* steel and [$<5\%$]* cast iron. Sanitec has submitted that, due to the durability of the product, cast-iron bathtubs are mainly used in public areas such as hospitals and hotels and constitute therefore a niche product.

(e) *Shower trays*

(17) Sanitec submits that, as with bathtubs, shower trays made out of different materials (ceramic, synthetic, steel and cast iron) serve the same purpose and are substitutes in terms of function, design and price from the consumer's point of view. Shower trays are usually used together with enclosures. According to Sanitec, [$<40\%$]* of shower trays are made of steel, [$<40\%$]* of ceramic and [$<40\%$]* of synthetic materials.

(f) *Shower screens*

(18) Shower screens and enclosures are usually used together with a shower tray or a bathtub to protect the bathroom from splashes. Shower cubicles integrate enclosures and trays into one piece. Sanitec submits that shower screens, enclosures and cubicles constitute one single product market from the demand-side. Furthermore, manufacturers of shower screens always produce enclosures and often also cubicles. The same material (acrylic sheets) is used when producing shower screens, enclosures and cubicles. However, glass is used in the luxury segment which is estimated to represent less than [$<5\%$]*.

2. An alternative product market definition

(19) In the course of the Commission's market investigation, a number of competitors and customers have suggested an alternative product market definition according to which ceramic sanitary ware (including WCs, WC cisterns, washbasins and bidets made out of ceramic) could be defined as a separate product market. In support of such a broader market definition for ceramic sanitary ware, a number of arguments have been put

forward. It has been argued that, from the demand-side, distributors and wholesalers of bathroom products usually buy a range of ceramic sanitary ware. A range refers to WCs, WC cisterns, washbasins, pedestals and sometimes also bidets and urinals, which are installed in the bathroom as a set because customers usually require these products to have a common design. This would apply both with regard to new construction as well as to refurbishment (see recital 21). It has furthermore been suggested that it is only in rare replacement cases (considering the long life cycle of ceramic sanitary ware products) that single pieces will be sold.

3. Demand-side substitutability

- (20) As already stated, Sanitec submitted in its notification that each of the six affected products mentioned, i.e. WCs, WC cisterns, washbasins, bathtubs, shower trays and shower screens, should be considered as distinct markets. With respect to the ceramic products, Sanitec's main argument was that, for instance, WCs and washbasins are not interchangeable from the final consumer's point of view and that, for this reason, they cannot belong to the same relevant product market.
- (21) Sanitec submitted further that customers do not in general purchase one product line (i.e. a range of products encompassing for example either all ceramic sanitary ware and a bathtub and/or a shower tray). However, Sanitec has subsequently clarified its position by submitting further details relating to new building and refurbishment activities. Reference is made to a study⁽⁵⁾ which identifies the following end-uses for ceramic sanitary ware: new housing (i.e. construction of houses for private households), non-housing (i.e. construction of hospitals, hotels, etc.), home improvement via installers/showrooms and, finally, home improvement via DIY chains. The first two categories cover new building activities and represent [25% to 45%]* of the total market whereas the last two categories cover refurbishment activities and represent [55% to 75%]* of the total market.
- (22) According to Sanitec's estimates, [45% to 75%]* of the ceramic sanitary ware sold to new building activities is sold as a series of products. With respect to the refurbishment market, Sanitec estimates that [65% to 85%]* of the ceramic sanitary ware sold to home improvement via installers is sold as a series of products whereas [25% to 45%]* of the ceramic sanitary ware sold to home improvements via DIY chains is sold as a
- series of products. With respect to the latter, Sanitec estimates that the share of sales of series is increasing steadily⁽⁶⁾.
- (23) In conclusion, the information given by Sanitec clearly confirms the view submitted by a number of third parties in the course of the Commission's investigation, namely that, while it is true that from the functional point of view the different products cannot be considered as substitutable, final consumers tend to purchase a series of ceramic sanitary ware products for new construction purposes and that the proportion of purchases of series for refurbishment purposes is indeed considerable and amounts at present to more than half of the total sales in this segment.
- (24) Moreover, a large number of distributors and wholesalers in their responses to the Commission's enquiries have considered it important to be able to supply the whole range of ceramic sanitary ware to their customers and, therefore, they will typically demand a full range of each manufacturer's product portfolio. This applies in general both to the Nordic countries⁽⁷⁾ and continental Europe⁽⁸⁾. It has furthermore been indicated that manufacturers typically offer joint discounts for a range of products, giving an important incentive for distributors and wholesalers to buy a range of products.
- (25) The Commission notes that the typical ceramic sanitary ware products are only to a very limited extent substituted by other materials. For example, based on the information submitted by Sanitec, non-ceramic washbasins are niche products and represent less than [<15%]* of all washbasins sold at the EEA-wide level as well as in general on a national level. This view has been confirmed by third parties who generally consider the volumes of washbasins made of non-ceramic materials to be negligible and only used in niche segments.
- (26) Furthermore, it has been suggested that the price of non-ceramic washbasins is considerably higher than the price of ceramic products. In addition, based on the information available, the parties do not have a proportionally higher share of the sales of non-ceramic washbasins than that of ceramic washbasins and it

⁽⁵⁾ GB Consult, a consultant company publishing studies analysing the European bathroom product markets, has carried out two studies which have been used for the analysis in this Decision: *The West European Bathroom Products Market (1998 update)* — 10 Country International Synthesis (December 1998) and *Ceramic Sanitary Ware Products in Scandinavia (preliminary data)* (May 1999).

⁽⁶⁾ Sanitec has estimated that the figure concerning the sales of ranges via DIY is even higher in some individual countries where DIY chains are particularly developed, for instance between [<50%]* and [<60%]* in Germany. Moreover, the sales of ranges of products via DIY chains have been estimated to grow at the same time when DIY chains are gradually gaining market share at the expense of traditional distribution channels.

⁽⁷⁾ In this Decision, the 'Nordic countries' or 'Nordic area' refers to Denmark, Finland, Iceland, Norway and Sweden.

⁽⁸⁾ 'Continental Europe' in this Decision refers to Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and the United Kingdom.

should be noted that third parties responding to the Commission's investigation have not raised any competition concerns with regard to the parties' position in other materials than ceramics. Hence, the Commission does not consider it necessary for the purpose of the present assessment to analyse separately the impact of the concentration on non-ceramic sanitary ware products.

- (27) With respect to bathtubs, shower trays and shower screens, it has been suggested that they constitute distinct separate markets from ceramic sanitary ware because distributors normally do not buy these products as part of a set. Furthermore, these products are normally not streamlined with ceramic sanitary ware in terms of a particular design. This would mean in practice that distributors would buy ceramic sanitary ware from one supplier while the remaining bathroom products could be bought from different suppliers. As far as the division according to different materials is concerned, the Commission's investigation suggests, in line with the arguments put forward by Sanitec, that a segmentation based on different materials would not be meaningful. Thus, from the demand-side, bathtubs, shower trays and shower screens are considered as distinct product markets from ceramic sanitary ware. Moreover, according to the information provided by Sanitec, the parties' market shares for these products on a national level would not differ significantly even if the products were broken down into different materials. Therefore, for the purpose of the present assessment, the Commission does not consider it necessary to further analyse the products in terms of different materials from the demand-side point of view.
- (28) Finally, the Commission's investigation has confirmed that all major competitors offer a range of products representing different price levels. It has been indicated that, for this reason, it would not be meaningful to define any of the above products according to the price level.
- (29) Based on the foregoing, the Commission considers that, from the demand-side, there are strong indications to define a market comprising a range of ceramic sanitary ware products and that distinct markets exist for bathtubs, shower trays and shower screens, respectively.

4. Supply-side substitutability

- (30) From the supply-side point of view, it has been suggested in the course of the Commission's investigations that a separate relevant product market for ceramic sanitary ware exists. It has been argued that producers of ceramic sanitary ware typically produce all ceramic sanitary ware products together and that a particular plant is confined to producing either ceramic sanitary ware or products made of other materials, such

as acrylic or steel. Moreover, it has been argued that the switching of existing production lines to manufacture different ceramic products is generally possible and feasible, whereas the switching of production from ceramic sanitary ware products to different materials would require an entirely different type of production.

- (31) Sanitec has submitted that the production process for the manufacturing of ceramic sanitary ware differs from that used for the manufacturing of steel products and those used for the manufacturing of acrylic products. There are different technologies and production lines used to produce bathroom products out of different materials.
- (32) The production process of ceramic sanitary ware⁽⁹⁾ is briefly described as follows. The production process consists of slip preparation (ceramic mass), glaze preparation, casting, demoulding, finishing, drying, glazing and firing. In the first production phase, the loose slip is poured into plaster moulds where, after a certain period has elapsed, excess slip is removed, the mould opened and the initial product is ready for drying and glazing. The glaze gives the final product a strong surface and colour. For glazing, the product is heated in a kiln at a maximum temperature of 1 230 °C. After this, a final inspection will be carried out to ensure that there are no defects.
- (33) The production process of enamelled steel products (bathtubs and shower trays) consists of the following phases: after the mechanical pressing of the sheet, the resulting product is degreased and a layer of enamel is sprayed on the entire product surface. The piece is then baked in a stove at 850 °C after which it is sprayed with white enamel. The enamelled product is then baked a second time at 850 °C and the final product control is carried out.
- (34) The production of synthetic products (bathtubs and shower trays) begins with the heating of synthetic/acrylic sheets at about 180 °C. The sheets which are then laid down on the stamp to be moulded. Bodyworks obtained in this way are then strengthened in the spraying room with a mixture of polyester resin and calcium carbonate and glass fibres. Subsequently, the bodyworks are placed in a polymerisation stove at a temperature of about 40 °C. Finally, the bodyworks are automatically trimmed along the edges.
- (35) The production of shower enclosures, screens and cubicles mainly consists of assembling parts and is a simple process.

⁽⁹⁾ The following materials are used for manufacturing ceramic ware: vitreous china (a fine grain material not absorbing more than 0,5 % of water), fine fire-clay (a porous medium-grained material absorbing about 9 % of water and covered with white or coloured enamel) and fire-clay (a porous medium-grained material not absorbing more than 13 % of water and covered with white or coloured enamel).

- (36) As can be seen, the production processes of ceramic, enamelled steel and acrylic sanitary products differ to a considerable extent. The Commission's investigation has shown that most manufacturers have production plants specialising in a specific production process based on material. This appears also to be the case with respect to the parties' production plants. For example, based on the information in the notification, Sanitec has 10 production plants in the EEA and six production plants outside the EEA which are all confined to the production of ceramic sanitary ware. Bathtubs and shower trays made of synthetics and steel are produced at other plants. Similarly, Sphinx has five production plants in the EEA and two production plants outside the EEA which are all confined to the production of ceramic sanitary ware. Bathtubs and shower trays made of synthetic materials are produced in another plant while shower screens are produced separately.
- (37) According to Sanitec, a manufacturing plant for ceramics cannot, without significant cost and delay, start production of bathroom products made of other materials and vice versa. This view is shared by most competitors. On the other hand, Sanitec submits that the starting-up costs for the production of acrylic products are low and estimated to be at the highest, EUR [...] million. On that basis, Sanitec considers that a supplier of ceramic sanitary ware could easily start up a new plant for the production of acrylic bathroom products if that were deemed necessary. The Commission's investigation reveals, however, that the start-up costs are considered to be significant by other competitors. Furthermore, the information obtained by the Commission in the course of its investigation seems to suggest that high-capacity utilisation is generally needed for profitability in this industry and thus it must be assumed that such a plant would need considerable volume of output in order to be profitable.
- (38) Sanitec has argued that although there are differences in technologies and production lines used to produce bathroom products of different materials, all major manufacturers supply bathroom products made of different materials. Based on the Commission's investigation this does not, however, seem to be the case for a number of European manufacturers. For example, Bette, Metaliberica, Geberit, Kaldewei, Flair and Merloni do not produce any ceramic sanitary ware.
- (39) On the basis of the foregoing, the Commission does not consider that there is sufficient supply-side substitutability between manufacturing plants using different materials.
- (40) The Commission further notes that both parties' ceramic sanitary ware plants all produce the whole range of ceramic sanitary ware, i.e. WCs, WC cisterns, washbasins and in some cases also bidets, pedestals and shower trays made of ceramics⁽¹⁰⁾. The investigation shows that competitors who produce ceramic sanitary ware also produce a range of these products.
- (41) According to Sanitec, a supplier of a specific ceramic sanitary ware product (for example WCs) can switch to the production of other products of ceramic sanitary ware (for example washbasins) without major switching costs. Sanitec estimates that the costs would amount to EUR [...] for 45 000 pieces of ceramic sanitary ware, provided that it is only the casting equipment that needs to be replaced. Sanitec has estimated this to take between [...] months. The foregoing has largely been confirmed by competitors. It has been indicated that, as long as the model is available, switching production would be relatively easy. The investigation shows that one model can be used some 120 times, after which it has to be replaced by another model. Depending on whether casting takes place once or twice a day, switching can take place within three to six months, if the manufacturer wants to use the old model first before switching to another one. However, there is no reason why switching production could not in principle take place earlier, too.
- (42) Based on the above, it would appear that ceramic sanitary ware is most likely to constitute a single relevant product market from the supply-side point of view. Furthermore, bathtubs, shower trays and shower screens also appear to constitute distinct markets from the supply-side.

5. Conclusion on the relevant product market

- (43) On the basis of the foregoing, the Commission considers that there are strong indications that ceramic sanitary ware constitutes one single product market both from the demand-side and the supply-side points of view. It is not, however, necessary for the purpose of the present Decision to define exactly whether the relevant product market should comprise ceramic sanitary ware as a whole or, alternatively, individual products. The product market definition can be left open because, as will be shown below, in either of the two alternative market definitions considered, the operation would lead to the creation or strengthening of a dominant position in the Nordic countries. Furthermore, it is the view of the Commission that in either of the two alternative market definitions the operation would not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly

⁽¹⁰⁾ This is further evidenced by the fact that neither Sanitec nor Sphinx has been able to provide data on capacity, capacity utilisation, production costs, etc. for each ceramic sanitary ware product [...].

impeded in any of the national or regional markets in continental Europe. Therefore, for the purpose of the present Decision, it is not necessary to finally decide on whether the relevant product market comprises ceramic sanitary ware as a whole or, alternatively, individual products.

- (44) With respect to bathtubs, shower trays and shower screens, the Commission considers on the basis of the above that these products constitute distinct product markets both from the demand-side and the supply-side point of a view.

B. RELEVANT GEOGRAPHIC MARKETS

- (45) Sanitec has submitted that the relevant geographic market for all the abovementioned bathroom products is at least EEA-wide but could even be wider, arguing that all competitors are active in the whole of the EEA or in a large part thereof and that most major players have European product lines and often market the products under the same names throughout Europe. Furthermore, Sanitec refers to increasing imports from inside and outside the EEA and considerable cross-border trade flows, the absence of regulatory or tariff barriers, low transport costs, homogeneous conditions of competition, pan-European marketing and distribution strategies, identical product standards, the increasing significance of European brands and converging prices.
- (46) Based on the information submitted by Sanitec and the information resulting from the investigation, the Commission considers, however, that for the reasons set out below the relevant geographic market should be considered to be narrower than the EEA. In fact, several factors indicate that the effects on competition of the notified operation should be assessed separately for the Nordic area and for continental Europe either at a national level or, alternatively, at a regional level.

1. General considerations

(a) Imports into the EEA

- (47) Sanitec submits that during the last few years there has been a steady increase in imports into the EU from low-cost countries in, *inter alia*, central Europe, south-eastern Europe and Africa. Sanitec argues more particularly that, from 1993 to 1998, the consumption of bathroom products increased only slightly but that

imports into the major European countries were stronger. Sanitec further argues that exports from most European countries increased during that period, too.

- (48) The Commission notes that an important development in the past few years in the western European bathroom product market has been a gradual shift of production capacity to countries offering more competitive production costs. The production of bathroom products has to a large extent moved outside the EEA into low-cost countries in particular in central and south-eastern Europe. All major European players in the field of bathroom products produce at low-cost plants in countries like Bulgaria, Hungary, Poland and the Czech Republic and distribute the products throughout the EEA.
- (49) The restructuring of the industry is evidenced by the large number of factories being closed down in the EEA. By way of example, Sphinx has recently closed its Novoboch plant in Belgium. It currently has two plants in Poland and one in Slovakia. Sanitec has closed down its plants in Germany and Italy and now has four plants in Poland, two production locations in Egypt and one in Lebanon. Similarly, Ideal Standard has closed down plants in Germany, France, Italy and the United Kingdom, and Villeroy & Boch a plant in France.
- (50) Sanitec has explained that the driving force behind moving production into low-cost countries has been the need to be more competitive on price. Sanitec has provided examples of production costs in the parties' ceramic sanitary ware production facilities. It can be seen that while the production costs per piece in Sanitec's factory in Germany are EUR [...] * and between EUR [...] * and [...] * in Finland and Sweden, production costs are only EUR [...] * and [...] * per piece in Sanitec's Polish plants. With regard to Sphinx's production facilities, the production costs are EUR [...] * per piece in Sweden and EUR [...] * in Germany, while they are between EUR [...] * and [...] * in Slovakia and Poland respectively.
- (51) The fact that production capacity has to a large extent moved outside the EEA appears to be the main reason for the increasing imports into the EEA. Third parties have estimated that as much as 80% to 90% of total third country imports originate from production plants or subsidiaries of companies headquartered in the EEA. Sanitec has provided information according to which approximately [$<60\%$] * of all imports coming into the EEA are transactions between entities belonging to the same group. In assessing the flow of bathroom products into the EEA, the Commission considers that these imports should be excluded. Intra-group imports are merely logistical trade flows based on more favourable production costs and, therefore, imports which do not originate from third parties do not impose any competitive constraint on the behaviour of the market players already active in the EEA.

- (52) In addressing the trade flows, the Commission has encountered some statistical difficulties. Sanitec has collected statistical data from different sources and has presented data both in terms of value and in volume. The difficulty in assessing the data from these different sources has been in particular the fact that volume figures have been presented both in tonnes as well as pieces and that these are not directly comparable. A further difficulty has been that some statistics relate to 1998 while others cover only 1997. Moreover, statistical data covers a range of products⁽¹¹⁾ and Sanitec has not been able to provide information separately for individual products. Finally, some of the statistical material available suffers from a lack of reporting and there are significant differences between different statistics.
- (53) The Commission has, however, compared the statistical material available with information obtained from third parties, and considers for the reasons below that the geographic reference area is not wider than the EEA.
- (54) Sanitec has provided Eurostat statistics showing the total imports in 1998 of WCs, WC cisterns, washbasins, bathtubs, pedestals, urinals and 'other' into the EEA. The Commission has established on the basis of the value figures that these imports were some 6% of the total value of these products in the EEA. It is to be noted that, based on the product market segmentation provided by Sanitec, pedestals and urinals have not been included in the total value figures given by Sanitec and, thus, imports were actually somewhat lower than 6%. However, this figure does not take into account the large intra-group sales. Given that Sanitec has submitted that some 50% of these imports were intra-company imports, it can be concluded that imports from third parties into the EEA totalled only some 3% at most.
- (55) Sanitec has also estimated import flows into the EEA on the basis of production and consumption of bathroom products in the EEA. Sanitec submits that imports in 1997 accounted for [$<20\%$]* of the consumption in western Europe. The Commission has calculated on the basis of the figures submitted that imports totalled at most some 12% of production and some 14% of the total consumption in the EEA⁽¹²⁾. However, given that between [45% to 95%]* of the imports have to be allocated to intra-group transactions, imports from third parties into the EEA did not exceed 7% under any circumstances.
- (56) Information obtained from third parties has confirmed that imports other than intra-group imports from outside the EEA are not substantial enough to warrant a market definition wider than the EEA. While some wholesalers import ceramic sanitary ware for instance from Asia or from eastern Europe, these imports are small compared to the overall trading volumes of these wholesalers. Some wholesalers have pointed out that imports, for instance from Asia would make commercial sense only if carried out on a large scale. These wholesalers have explained that they have to be able to stock and sell the leading brands and that the demand is not sufficient for them to import large quantities from outside the EEA.
- (57) Based on the investigation, the overall exports from outside the EEA appear to be insignificant. Most large players have local production facilities outside the EEA serving local or regional markets. As a general rule, exports are made only for some special items.
- (58) On the basis of the foregoing, the Commission draws the conclusion that the evidence on the limited imports into the EEA together with other evidence as discussed below does not support the adoption of a relevant geographic market wider than the EEA.
- (b) *Trade flows between EEA countries*⁽¹³⁾
- (59) Sanitec has submitted that there are considerable cross-border trade flows within the EEA in the field of bathroom products. It has estimated that [$<50\%$]* of the total EEA production of bathroom products is exported from one EEA country to another and [$<40\%$]* of the total EEA consumption is imported.
- (60) On the basis of the information submitted by Sanitec, the Commission notes that the trade flows vary considerably from one EEA country to another. By way of example, Portugal and Italy are net exporters with very low imports. Germany on the other hand imports [$<80\%$]* of its consumption of bathroom products and exports [$<40\%$]* of its production. Exports from Germany are, however, less than one third of what

⁽¹¹⁾ For instance, ceramic sanitary ware and bathtubs have been grouped together in different statistics.

⁽¹²⁾ Two different measurements have been submitted, that is, pieces and tonnes. The Commission has estimated the share of imports by converting pieces into kilograms. Sanitec has submitted that one piece weighs [$10-15$]* kg and the Eurostat figures assume that one piece weighs 14 kg.

⁽¹³⁾ 'EEA countries' refers to the Member States of the Community as well as Norway, Iceland and Liechtenstein.

Portugal and Italy each export. It is in particular noted that with regard to imports, the Nordic countries differ most from the rest of the EEA. Based on the information submitted by Sanitec, imports into the Nordic countries are less than [$<10\%$]* of all consumption.

- (61) Trade flows inside the EEA can partly be explained by the different production costs within the EEA. For example, the production costs per piece in Sanitec's factory in Germany are [...]* times higher than in the production facility in Portugal which explains why almost [$<80\%$]* of the production of that plant is exported to Germany.
- (62) Sanitec has argued that transport costs for bathroom products indicate an EEA-wide market. Sanitec has contended that transport costs are similar in all EEA countries and represent approximately [$<5\%$]* of the net average sales price per piece. Sanitec therefore claims that bathroom products can easily be transported over long distances.
- (63) The Commission has nevertheless been able to establish on the basis of the information supplied by Sanitec that, with the exception of Portugal, with regard to the majority of the parties' production facilities, the country of production is also the main country of supply and that of sales. Sanitec's Norwegian factory mainly supplies the Norwegian market. [$<95\%$]* of the production in Sanitec's plant in Germany is supplied in that country. Some [$<100\%$]* of Sanitec's Finnish and Swedish production is supplied in those countries and [$<80\%$]* of the production in Italy is supplied there. With regard to Sphinx's production facilities in Germany, France and the Netherlands, the overwhelming proportion of production is supplied in those countries.
- (64) Furthermore, an analysis of the product flows also shows that, with the exception of Portugal, the majority of exports from the parties' European production facilities goes to the neighbouring EEA countries. For instance, Sanitec's French production outlet and Sphinx's Belgian plant export [$<40\%$]* and [$<60\%$]* of their respective production to Germany. With regard to Sanitec's Italian production facility, which exports [$<30\%$]* of its production to Germany, it is to be noted that the production outlet is situated in the north of Italy and, therefore, the physical distance from Germany does not constitute a barrier for such exports.
- (65) The parties' product flow patterns would seem to suggest that, with the exception of Portugal, where production costs are on average much lower than in other EEA countries, production is optimised so that the production facilities mainly supply the country of production and exports are mainly directed to the neighbouring EEA countries. This is supported by the fact that most market operators have production facilities in a number of EEA countries. By way of example, Sanitec has altogether 24 production facilities in Europe, 12 of them producing ceramic sanitary ware, in a number of different countries. Therefore, the Commission does not consider that the production of bathroom products is geographically particularly concentrated in the EEA.
- (66) The Commission notes further that although there appears to be a tendency to move production to low-cost east and southern European countries, this does not necessarily mean that these production outlets would only serve the EEA market. Indeed, the investigation shows that a large part of the production in these countries serves mainly local markets (e.g. [$<70\%$]* of the production in Sanitec's Polish factory is supplied in Poland). It does not therefore appear likely that all production would be moved in the near future to low-cost east European countries. Also the fact that Sanitec has only recently invested in one of its Scandinavian production facilities supports the argument that regional production within the EEA would be essential also in the future.
- (67) The existence of numerous production outlets would rather seem to suggest that producers avoid long transport distances. Replies to the Commission's questionnaires show that, depending on the distance, transport costs could be up to 10% to 15% of the sales price. Transport companies and forwarding agents have also confirmed that distance is an important factor in calculating transport costs. Furthermore, the vast majority of transporters contacted informed the Commission that they transport bathroom products on a country-by-country basis. The fact that both Sanitec and Sphinx, who are by far the strongest players in the Nordic market, have production facilities in the Nordic countries would seem to suggest that in order to be competitive in this market, local or regional production is needed. This would seem to be supported by the fact that other competitors in the Nordic area have no production in the area and, therefore, they have to import all production from continental Europe. These competitors are only marginally present in the Nordic area. With regard to Portugal, however, it can be assumed that the production costs in this plant are sufficiently low to offset transport costs to Germany. The same would appear to apply to production plants situated in central and eastern Europe.
- (68) Evidence from competitors further supports the assertion that the country of production is usually also the country of supply and consumption and that trade flows are in general terms directed to regions surrounding the production facilities. For instance, a British manufacturer of ceramic sanitary ware mainly supplies its products in the United Kingdom. Another major manufacturer supplies ceramic sanitary ware from

its multiple production plants across Europe on a regional basis, indicating that for instance the United Kingdom and Ireland constitute one region, the Benelux area another region, Germany and Austria yet another one and so on.

- (69) Therefore, the fact that production has not been geographically particularly centralised and that the parties have a number of production outlets all over Europe with a tendency to supply home markets and the neighbouring markets is taken as evidence that the supply of bathroom products is optimised in order to minimise the transport distance.

(c) *Market structure*

- (70) The market position of the players differs from one country to another. While it is true that the large suppliers of bathroom products operate in several European countries, the market shares vary significantly between neighbouring countries.
- (71) Overall, the European manufacturers have their strongest presence, both in terms of production and sales, in their domestic markets. For instance, Duravit/Laufen is strong in Switzerland and Austria but is not present in Spain, Italy or the United Kingdom. Villeroy & Boch is strongest in its home market, Germany, but has no activities in Spain, Italy or Portugal. Roca, the Spanish producer, has a substantial part of the Spanish market but virtually no activities in Germany or France. Sanitec is by far the strongest player in the Nordic countries while the abovementioned competitors are present there only marginally.
- (72) The Commission considers the foregoing to be a clear indication that conditions of competition are not homogeneous throughout the EEA.

(d) *Structure of the demand-side*

- (73) Sanitec has submitted that the structure of distribution channels is similar throughout the EEA. In particular, Sanitec argued that most products are being distributed through wholesalers and that wholesalers, together with DIY retailers, are in general active in large parts of the EEA. Later in the proceedings, Sanitec submitted that, at the very least, several large wholesalers are active in an area covering all of Benelux, France and Germany and therefore the geographic market should be defined as at the very least covering that area.

- (74) While addressing Sanitec's arguments relating to a possible market covering Benelux, France and Germany, the Commission's investigation has shown that the demand-side in the EEA does not support Sanitec's argument of an EEA-wide market. On the contrary, while recognising that the majority of supplies of bathroom products are still channelled through wholesalers in many EEA countries, the investigation shows that the structure of the demand-side differs in particular with respect to alternative distribution channels (DIY, specialist boutiques and direct supplies). For example, in central Europe (i.e. Belgium, Germany, France, the Netherlands, Austria and the United Kingdom), DIY retailing is highly developed and has a significant impact on the bathroom market whereas in the Nordic countries and southern Europe (i.e. Spain, Italy and Portugal) DIY retailing is far less present. Furthermore, the concentration of the wholesalers differs throughout the EEA. For example, in southern Europe, wholesaling remains fragmented while it is mostly concentrated in the Nordic countries and to a lesser extent in central Europe. This could mean that the access to distribution channels may differ from one country to another.

- (75) In addition, the geographic presence of the immediate customers (i.e. wholesalers and retailers) varies significantly within the EEA territory. As a general observation, none of the 21 major distributors mentioned by Sanitec has a Europe-wide coverage. Moreover, the majority of the distributors are present in at most three EEA countries.

- (76) Sanitec has furthermore submitted that wholesalers and DIY retailers purchase their supplies on at least a national basis while the largest wholesalers with presence in several EEA countries also conclude contracts on an international level. By way of illustration, Sanitec has argued that a number of wholesalers (and DIY chains) apply a central purchasing policy making use of their total volumes in several EEA countries. The Commission notes that these examples cover only five EEA countries (Belgium, Germany, France, the Netherlands and Austria) and can thus not be considered as an argument in favour of an EEA-wide market. Furthermore, Sanitec has not been able to provide evidence showing that such central purchasing indeed takes place covering all these countries.

- (77) On the basis of the foregoing, the Commission considers that Sanitec has not been able to provide evidence to support the argument that the demand structure of bathroom products would be uniform throughout the EEA so as to warrant a market definition comprising the whole of the EEA. The Commission's own enquiries show, on the contrary, that the vast majority of the wholesalers and retailers purchase their products on a national or, at the very most, regional basis.

(78) Sanitec argues that consolidation is taking place at the wholesale and retail level in the bathroom products sector and that distributors are becoming more international in their operations. While the Commission does not exclude the possibility that such consolidation could take place on a Europe-wide basis in the future, there is no evidence that the distribution structure at present would warrant a definition of a geographic market comprising the whole of the EEA.

(e) *Prices and rebates*

(79) As already stated, the investigation shows that sourcing of bathroom products takes place generally at the national level. The existence of national sales offices and price lists further points towards national rather than regional markets. Sanitec has explained that German price lists are used in those countries where national price lists do not exist. This does not, however, mean that the prices in those countries would be identical to those in Germany in the sense that the geographic market should be defined to include all those countries. Quoting the German price list would rather mean that the product is not normally sold in a particular EEA country and that such a sale would be an infrequent transaction.

(80) Sanitec has further submitted that the rebate systems in different countries differ. By way of example, Sphinx normally grants higher rebates in [...] than in [...]. Similarly, Sanitec applies higher initial rebates in [...] than in [...] whereas the additional customer-related rebates in [...] are lower than in [...] ⁽¹⁴⁾.

(81) Several competitors and customers in their replies to the Commission's enquiries have indicated that prices differ between EEA countries. The investigation shows further that while the general perception of the price development in continental Europe has been that prices have been declining, several Nordic customers have indicated that prices have actually been increasing. In this respect, the Commission notes that the general trend of price decline in continental Europe has varied from one country to another. For instance, it has been indicated that while prices have gone down in Italy only by 1%, in Germany the fall has been as much as 10%.

(82) In order to investigate the price levels in EEA countries, the Commission requested Sanitec to provide prices for identical products sold in different EEA countries. Sanitec subsequently explained that the parties do not sell products which are identical in all EEA countries they are active in. Sanitec was able, however, to provide

price information on identical products sold in a number of EEA countries.

(83) Sanitec provided gross list prices between 1995 and 1998 for some identical products in the ceramic sanitary ware group for Sanitec's product line 'Renova' and Sphinx's product lines 'Mycene' and 'Ibiza'. Sanitec also provided prices paid by wholesalers net of all discounts and rebates ('net net prices') for some of these products. For most of these products, the price information was given for Belgium/Luxembourg, Germany, the Netherlands and Austria. For some products, prices covering Spain, France, Italy, Portugal and the United Kingdom were submitted. [Sanitec submits that there are no data available separately for Luxembourg and that Belgium and Luxembourg should be assessed together. Given that the Luxembourg market is very small, the analysis would not change even if Belgium and Luxembourg were to be assessed separately.]*

(84) The Commission investigated the level of both gross list prices and net net prices in different EEA countries where the products were sold ⁽¹⁵⁾. The Commission then indexed the prices, taking Germany as the base. The Commission regards Germany as a suitable reference point because, for instance, the majority of the products sold under Sanitec's Keramag brand name, like the 'Renova' product line, are sold in Germany and, in the absence of a national price list, Sanitec quotes the German price list.

(85) An analysis of the gross list prices shows that there is considerable variation between the prices in different EEA countries. By way of example, the list prices for a [...] WC fluctuated between [<30] and [<50] points between 1994 and 1999 for five EEA countries, pointing towards significant differences in prices. Another example is a [...] WC where the price difference reached [<50] points in 1999.

(86) Significant differences in prices can be seen also when comparing the net net prices. During 1995 to 1998, the difference between the highest and the lowest indexed net net price in Belgium/Luxembourg, Germany, Italy, the Netherlands and Austria for a [...] WC ranged between [<10] and [<30] points. The average deviation for this period was [<20] points. At the same time, the difference between those countries for a 'Renova' washbasin ranged between [<10] and [<20] points.

⁽¹⁵⁾ Sanitec has argued that the gross list prices are less relevant than the net net prices. Sanitec has explained that although rebate structures differ between countries and that, for instance, higher initial rebates are granted in [...] than in [...], the net net prices are approximately the same for identical products in different countries.

⁽¹⁴⁾ [...].

points, with the average being [<10]* points. For a [...] shower tray the difference was more pronounced: during the period price differences between Belgium/Luxembourg, Germany, France, the Netherlands and Austria were [40-100]* points, with an average of [<60]* points. As for a [...] WC, where Sanitec has provided net net prices for Belgium/Luxembourg, Germany, the Netherlands and the United Kingdom, the difference between the highest and the lowest price was between [<10]* and [<30]* points, with an average of [<20]* points. The price differences ranged from [<20]* to [<40]* points for a 'Mycene' washbasin in those countries, with an average of [<30]* points.

- (87) Given that price data have been submitted only for a few products (Sanitec produces and sells some 8 000 different models), this information should be considered merely indicative. Sanitec in its submission has used similar price data as evidence of, for instance, narrowing price gaps between EEA countries, price correlation between EEA countries and correlation between prices and market shares. The Commission considers, however, that the basis for any such price analysis is not sufficient for the results to be conclusive. It is neither possible to establish any reliable trends in the price movements nor correlations, since price data have been submitted only for three to six years and only yearly price data are available.
- (88) Sanitec has admitted that the price levels at present differ to some extent between EEA countries. According to Sanitec, prices differ because the sales mixes, the structure of customers and wholesalers, after-sales services, delivery times and conditions, warranties, repurchasing guarantees, packaging, transportation costs, information material and ordering possibilities differ from one EEA country to another. Given this and the tendency to source on a national basis, different national rebate systems and third party indications of different price developments in EEA countries, the Commission considers that differences in gross list prices and, in particular, in the net net prices further strengthen the argument of a possibility to discriminate on price, and point towards national or, at most regional markets.

(f) *Geographic coverage of brands and product lines*

- (89) Sanitec submits that 'European production lines' are emerging. Sanitec defines a European product line as a line of products — including ceramic sanitary ware such as WCs, WC cisterns, washbasins and pedestals —

which is marketed in several EEA countries. Sanitec has explained that such products are identical and do not vary between EEA countries as far as design, function, fittings and technical standards are concerned.

- (90) The investigation shows, however, that the supply structure of different brands and product lines varies, sometimes considerably, from one EEA country to another. A clear-cut separation can first of all be made between the brands supplied in the Nordic countries and those marketed in continental Europe. As a general observation, the brands supplied in the Nordic countries are not supplied, to any significant extent, in continental Europe and vice versa. The brands dominating the Nordic market are Sanitec's brands Ido and Ifö and Sphinx's brand Gustavsberg. Sanitec's Porsgrund brand is sold exclusively in Norway. The sales of those brands outside the Nordic countries are negligible.
- (91) Secondly, the brands and product lines marketed in continental Europe also differ between regions and frequently from one country to another. In general terms, Sanitec supplies the brand Keramag primarily in Benelux, Germany, Greece, Italy and Austria; the brand Allia in Benelux and France; and the brand Pozzi in Germany and Italy. Sphinx supplies ceramic sanitary ware in continental Europe under the brand names Novoboch, Selles, Sphinx and Warneton. The Novoboch brand is supplied exclusively in Belgium/Luxembourg and the Selles brand in France. Sphinx markets its Sphinx brand in Belgium/Luxembourg, Germany, the Netherlands, Austria and the United Kingdom.
- (92) The Commission investigated the coverage and the nature of the following of Sanitec's European product lines for ceramic sanitary ware: Keramag, Allia, Pozzi, Revita and Varicor. As far as the sales and the coverage of bathtubs is concerned, Sanitec has submitted data regarding the brands Keramag, Revita, Albatros and Allia. The data submitted cover a total of 54 product lines⁽¹⁶⁾.
- (93) The investigation shows that a large majority of the product lines supplied by Sanitec are sold under one brand name. By way of example, Allia is the sole supplier of seven product lines and Pozzi of 18. A number of product lines are also essentially national. This is particularly true for Pozzi, which is predominantly sold in Italy. Three of Allia's seven product lines are only available in Germany and one in France.

⁽¹⁶⁾ It is to be noted that Allia branded products are not shown separately for the Netherlands because they are distributed by Keramag's sales organisation in the Netherlands.

- (94) There are six product lines which are all supplied under the brand names Keramag, Allia and Pozzi: 'Mango', 'Cavelle', 'Courreges', 'Eurotrend', 'Opus' and 'Cleo'. These product lines appear to cover most EEA countries in continental Europe. The investigation has however shown that the coverage of the individual product lines marketed under these brand names may vary considerably from one country to another, suggesting both national/regional demand and supply structures.
- (95) Indeed, a closer analysis of the specific products shows that the range of products sold under different brand names overlaps only marginally. By way of example, Keramag supplies 73 different products under the 'Mango' product line, Allia 25 products and Pozzi 71. The analysis shows that Keramag and Allia have only six identical products in their 'Mango' product line and Keramag and Pozzi have 19 identical products in their respective lines. Allia and Pozzi, on the other hand, do not have any identical products in their respective 'Mango' product lines.
- (96) Another example can be found where a product with an identical name is supplied under three brand names: Keramag supplies under the product name 'Courreges' 36 products, Allia 14 and Pozzi 33. The Commission's analysis shows that Keramag and Allia supply only six identical products in their product line, Keramag and Pozzi 10 products and Allia and Pozzi two identical products in their respective product lines.
- (97) Therefore, based on the foregoing, the fact that products are offered under the same product line name does not mean that the products are necessarily identical.
- (98) On the other hand, Sanitec offers product lines, where the products are more or less similar despite different names. Such product lines include for example 'Cavelle', 'Eden' and 'Trylogia'. By way of example, a 100 cm washbasin supplied under each of the three product lines is identical, although sold under different names in different countries. However, given that the Commission has been able to identify only nine such product lines out of the total of 54 supplied by Sanitec and that these product lines are very limited in the number of products they offer⁽¹⁷⁾, the Commission does not consider this to be an indication of an EEA-wide product coverage. Therefore, the Commission concludes that the majority of the product lines vary from one country/region to another.
- (99) Sanitec has explained that although all product lines are identical in those countries where they are sold, this does not mean that every product in a product line is sold in every country where that product line exists. Sanitec has explained that local sales organisations essentially decide on the nature and the coverage of the product line. Sanitec has further submitted that the product mix varies between EEA countries and thus reflects diverging consumer tastes.
- (100) Sanitec submits that the fact that most competitors have European product lines is a clear sign of an EEA-wide market. The main competitors to the parties indeed have brands and product lines which are sold in a number of countries. Similarly to the parties' brands and product lines, however, many of the competitors' brands and product lines vary from one country or region to another. By way of example, one competitor sells some of its products under the same brand names throughout Europe but in most cases, however, uses a country-specific product name for marketing purposes. Another competitor markets brands and products under the same names everywhere, but the product lines are constructed according to national demand patterns. By way of example, this competitor offers products in Italy, which are not sold in any other EEA countries. In the United Kingdom, where the flushing system based on the British standard differs from those in other EEA countries, this competitor does not offer WCs equipped with this system. Yet another competitor has told the Commission that although it offers brands and product lines under the same names in different countries, there are differences in the product ranges. This competitor has explained that, for instance the models for WCs tend to vary from one country/region to another and that the WCs used in the Nordic countries have traditionally a different distance from the wall compared with models sold in continental Europe. Therefore, a different model is needed to serve this market. These differences would appear to reflect differences in consumer taste, preferences and local traditions between EEA countries or, at the most, regions.
- (101) Based on the foregoing, the Commission considers that there is little overlap between the products offered in different EEA countries or, at most, regions. Therefore, the Commission considers this to be evidence of adjusting the product offered according to national/regional demand rather than following EEA-wide marketing practices.
- (g) *Technical standards and practices*

⁽¹⁷⁾ 'Cavelle', 'Eden' and 'Trylogia' product lines comprise some 17 products each, while the 'Mango' product line under the Keramag brand covers 73 products (excluding bathroom furniture) and the 'Renova' product line sold under the Pozzi brand name comprises almost 100 products.

- (102) Sanitec submits that there are no legal barriers to entry such as government authorisation or standard setting

between the EEA countries and that there are no non-regulatory barriers. Sanitec argues that bathroom products are 'products produced for incorporation in a permanent manner in construction works, including both buildings and civil engineering works' and are therefore covered by Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products ⁽¹⁸⁾, as amended by Directive 93/68/EEC ⁽¹⁹⁾. Sanitec also submits that most bathroom products including ceramic sanitary products are presently covered by EN standards, such as EN 33 (pedestal WC pans with close-coupled flushing cistern), EN 38 (wall hung WC pans with independent water supply) or EN 37 (pedestal WC pans with independent water supply) or preliminary EN standards.

- (103) The Commission's market investigation has, however, indicated that there are a number of regulations, standards and practices which vary between EEA countries.
- (104) First, there are some sanitary appliances (WC pans, urinals, whirlpools and flushing cisterns for toilets) for which different national binding regulations exist in EEA countries. There are also some EEA countries where there are legally binding rules for construction and housing products including sanitary ware (such as the Netherlands and Denmark). In the United Kingdom there is a national law on flushing systems for toilets.
- (105) Second, while the Commission recognises that European standards (EN standards) are indeed in place for certain bathroom appliances, they are still relatively limited in number ⁽²⁰⁾ and some of them are only applicable or applied in certain EEA countries. Moreover, the EN standards only contain requirements on connecting dimensions and therefore they are usually combined with national standards containing requirements on dimensions, function and performance. It should be noted that the EN standards are voluntary but producers who wish to use the EN mark on their products must conform with the standard's requirements.
- (106) Third, the Commission's investigation has shown that there are a considerable number of national specifications for sanitary products relating to dimensions, function and performance and that they differ between the EEA countries. In France, there are specific requirements for the dual flushing system of

toilets, for load resistance for urinals and thermal resistance of the products. In the United Kingdom, there is a siphonic flushing for toilets and floaters for low pressure have to be applied. In the Nordic countries, the distance between the outlet pipe and the wall differs from other EEA countries. In the Netherlands, there is a special test for water exchange of toilets, and so on.

- (107) Although national standards are voluntary and producers are not obliged to comply with them in order to sell their products in the EEA country concerned, the investigation has shown that the customers (wholesalers, installers and plumbers) as a rule ask their producers to comply with national standards, mostly by having their products tested and certified by institutions which are recognised by national law. There seem to be a number of reasons for this. For example, in buying products which are in compliance with the national standards, customers in general feel they can rely on getting only products which fulfil the essential requirements for their intended use. This consideration is an important factor also for plumbers who grant warranties to their end-consumers, which are usually of 10 years duration. Also, plumbers and installers have an interest in purchasing products which can be installed applying national plumbing practices and for which fittings can be obtained without difficulty.
- (108) On the basis of the above, the Commission considers that there are indeed some regulatory differences between EEA countries and that, although national standards are in principle voluntary, customers and thus also competitors have strong commercial incentives to comply with these standards.

(h) 'Europeanisation'

- (109) Sanitec argues that while old product lines may have been used in a limited number of countries, the trend is to introduce European product lines with a reduced number of series and identical products in order to cut costs and to achieve economies of scale. In this context, Sanitec has explained that Sphinx is striving to reduce the number of different models [...]*
- (110) Sanitec argues further that the development of Sanitec's product coverage between 1996 and 1998 would support the argument of a European trend in the market. Sanitec introduced such European product lines as 'Cavelle', 'Trylogia' and 'Eden' in 1997 and 1998. Moreover, Sanitec has only recently started to develop its Keramag brand's position in Greece, Spain and the United Kingdom.

⁽¹⁸⁾ The construction products Directive, OJ L 40, 11.2.1989, p. 12.

⁽¹⁹⁾ OJ L 220, 30.8.1993, p. 1.

⁽²⁰⁾ According to information obtained in the course of the Commission's investigation, there are currently 29 EN standards in place. However, 16 thereof are amendments and thus there are only 13 autonomous EN standards in place.

(111) The Commission recognises that there may be some tendencies in the industry to streamline products to be suitable to a pan-European market. However, the investigation shows that, at present, products and product ranges are largely adjusted to national/regional demand. The fact that Sanitec alone markets more than 50 product lines and 8 000 models under its brands across Europe is a clear indication of this. Furthermore, marketing of bathroom products is to a large extent carried out on a national basis with local sales organisations adapting sales catalogues and brochures to use the local language. Finally, the fact that prices are set on a national basis and that all market players have national sales offices emphasise the prevailing national/regional nature of the business. The fact that, in the long term, the bathroom product market may become European cannot be taken into account in the assessment of the present case.

(i) *Barriers to entry*

(112) The investigation has shown that barriers to entry in the European bathroom product market are high. The markets are essentially national, characterised by traditional preference for local, well-established brands. Market entry essentially takes place via acquisition of local brands which are then preserved. By way of example, Ideal Standard recently acquired the Blue Circle Bathroom Division and is using established brands, such as Armitage Shanks, to market the products in the United Kingdom. Sanitec itself has reached its present leading position mainly by acquisitions. Indeed, in its annual report Sanitec explains that its enlargement strategy has been to buy companies with a strong market position. Most of Sanitec's subsidiaries are market leaders in their respective home markets with well-established and well-known brands and long traditions.

(113) At present, there is considerable restructuring in the European bathroom product market and the market appears to be in transition. It cannot therefore be excluded that, as a consequence, direct entry could be easier in the future. However, in the light of the present investigation, the Commission considers that the role of local, traditional brands is still significant.

(114) Furthermore, the information obtained in the course of the Commission's investigation suggests that high capacity utilisation is generally necessary for the production of bathroom products to be profitable and thus it must be assumed that a new market entrant would be required to sell a considerable volume of output.

(j) *Conclusions*

(115) On the basis of the foregoing, the Commission does not consider the relevant geographic market for ceramic sanitary ware, bathtubs and shower trays to be EEA-wide, but national⁽²¹⁾ or at best covering a few countries, as will be shown separately below for the Nordic countries and continental Europe.

2. The Nordic area

(116) Sanitec has submitted that imports into Scandinavia are approximately at the same level as into Italy and Portugal, that is, some [$<10\%$]* of total consumption. Sanitec nevertheless argues that imports into Scandinavia have increased more than [$<400\%$]* over the past three years. Sanitec submits further that imports into Scandinavia from outside the EEA (e.g. from Poland and Thailand) are rising due to the very competitive prices of the products. Sanitec has also submitted that there are large exports from Scandinavia, amounting to some [$<40\%$]* of the total production in that area.

(117) On the basis of the import statistics provided by Sanitec, the Commission has estimated that the flow of imports into Scandinavia in terms of value was some 13% in 1998. However, based on the internal import figures submitted by Sanitec, the Commission has estimated that less than 1% of these total imports originated from third parties, the bulk of imports being intra-group transactions of Sanitec and Sphinx. Sanitec has argued that the statistical data concerning third party imports is not reliable and that third party imports are underestimated. Statistical difficulties arise especially from FECS⁽²²⁾ statistics. According to these statistics, imports in 1996 represented less than 8% of total consumption in Scandinavia. However, according to the same statistics, in 1997 imports dropped to only half of that figure, which is contrary to what Sanitec has argued. Sanitec has subsequently explained that FECS statistics are not reliable due to a lack of reporting. In any event, the FECS statistics do not distinguish between imports originating from third parties and intra-group trade flows which form the major part of the imports going to the Nordic countries. Therefore, the

⁽²¹⁾ The national scope of certain bathroom products has been confirmed in a number of decisions from the national competition authorities. Reference is in particular made to a Decision of April 1999 from the Italian competition authority (Decision No 7080 (C3409) Ideal Standard/Ceramica Dolomite) and a Decision from the Spanish competition authority (Decision R.104/94 — Roca Radiadores SA) which was upheld in a Spanish court.

⁽²²⁾ Federation européenne des fabricants de céramiques sanitaires.

Commission concludes that imports other than intra-group imports mainly by Sanitec and Sphinx into the Nordic countries are negligible.

- (118) The Commission's own investigations confirm that imports into the Nordic countries are modest. In their replies to the Commission enquiries, customers have confirmed that they source bathroom products either on a national basis or they import ceramic sanitary ware from other Nordic countries, mainly from Sweden and Finland.
- (119) Sanitec argues that the total exports of ceramic sanitary ware from Scandinavia totalled some [$<40\%$]* in 1997. By way of example, Sweden exported [$<80\%$]* of its total production to other Nordic countries and Finland almost [$<70\%$]*. The majority of the remaining exports were intra-group exports mainly to continental Europe. Finland also exported some ceramic sanitary ware to Russia and the Baltic States. According to the Commission's estimates these exports were less than 1% of the total exports made from Nordic countries in 1997.
- (120) In addition to very low imports originating from continental Europe, a striking feature pointing strongly towards the separation of the Nordic countries from the rest of Europe is the fact that the supply structure differs from that in continental Europe. As explained above, the brands supplied in the Nordic countries are not supplied, to any significant extent, in continental Europe and vice versa. Other producers, such as Villeroy & Boch and Ideal Standard, are only very marginally present in the Nordic countries. Moreover, the products supplied under these brands also differ from those supplied in continental Europe.
- (121) A further characteristic pointing towards the separation of the Nordic countries from continental Europe is the distribution structure. Of the 21 major European distributors (i.e. wholesalers and DIY stores) of bathroom products mentioned by Sanitec only three are present in the Nordic countries. None of the major distributors present in continental Europe is active in the Nordic countries.
- (122) Denmark differs to some extent from the rest of the Nordic countries in that Villeroy & Boch has somewhat more sales in ceramic sanitary ware in Denmark than in the other Nordic countries. However, the Commission's investigation shows that these sales are very small and that both the demand and the overall supply structure in Denmark are similar to those in the other Nordic countries. Furthermore, the fact that some of the wholesalers active in Denmark also operate in Sweden and/or Finland (Ahlsell, Onninen, Dahl) but not in continental Europe supports the inclusion of Denmark in the Nordic countries rather than in continental Europe.
- (123) As for bathtubs and shower trays, no import figures are available separately for the two product groups. However, given that the overall imports into the Nordic countries are very minor as shown above, it can be deduced that imports of bathtubs and shower trays other than intra-group, even if considered separately, would not warrant the definition of a relevant geographic market wider than the Nordic countries.
- (124) As already noted, there are some considerable trade flows between the Nordic countries, which would appear to suggest that the demand is more or less homogeneous and transport costs do not discourage trade flows within this area. However, the Commission has found in its investigation that there are some considerable price differences between the Nordic countries. The Commission has analysed price information provided by Sanitec on some individual products which were sold in different Nordic countries in 1998. A comparison of the net net prices shows that the prices between Denmark, Finland, Iceland, Norway and Sweden vary considerably, the differences being often in the region of [15 to 45%]*. It is not, however, necessary to define the exact scope of the geographic market because as will be shown below, in all alternative definitions considered, the assessment of the case would not be materially affected.

Conclusion on the Nordic area

- (125) In view of the foregoing, the Commission considers that the Nordic area constitutes a separate relevant geographic market from continental Europe. It is not necessary, however, to reach a conclusion as to whether the Nordic area constitutes one relevant geographic market or whether each country therein should be regarded as a separate geographic market because, in either market definition, the notified operation would lead to the creation or strengthening of a dominant position and the assessment of this case consequently would not be materially affected.

3. Continental Europe

- (126) As already discussed, the Commission investigations show that the geographic markets are national or, at

most, regional in scope. In its Decision of 3 August 1999 to initiate proceedings in accordance with Article 6(1)(c) of the Merger Regulation, the Commission identified potential competition problems in Belgium/Luxembourg and in the Netherlands. However, the Commission's subsequent analysis has shown that, for reasons set out later (see recitals 146 to 173), no competition concerns will arise as a result of the operation in this area.

- (127) In the course of proceedings, Sanitec has argued that Belgium/Luxembourg and the Netherlands are among the most open markets in the EEA and that there are large imports of products produced outside those countries. Sanitec has contended, at a later stage of the proceedings, that at least Benelux, France and Germany belong to the same relevant geographic market. The Commission notes that Sphinx's production facilities in the Netherlands and Belgium/Luxembourg are indeed the only manufacturing plants in this area. Neither Sanitec nor any of the competitors produce ceramic sanitary ware in the Benelux area. Consequently, there are trade flows in particular from Germany and France. However, for the reasons set out below, France and Germany are not considered to belong to the same relevant product market as Belgium/Luxembourg and the Netherlands.
- (128) Based on the product information submitted by Sanitec, it can be seen that there are some similarities between the products sold in France and in Belgium/Luxembourg on one hand and between Belgium/Luxembourg, Netherlands and Germany on the other hand. Due to lack of data concerning sales to the Netherlands under the Allia brand⁽²³⁾, it is not possible to draw conclusions on the extent of the products sold in the Netherlands under this brand nor make comparisons between the Netherlands, Belgium/Luxembourg and Germany in this respect. Sanitec has, however, submitted that most products sold in Belgium/Luxembourg are also sold in the Netherlands.
- (129) By way of example, the majority of identical products supplied under Sanitec's product lines 'Cavelle'/'Eden'/'Trylogia', 'Eurotrend', 'Opus'/'Palaios' and 'Felino' are supplied in Belgium/Luxembourg, the Netherlands and Germany. As for the rest of the product lines under the Keramag brand, such as 'Cleo'/'Arpege', 'Mango' and 'Courreges', some [...] of the products sold in Germany are also identical to those sold in Belgium/Luxembourg and the Netherlands. At the same time,

only a fraction of these products are sold in France. With regard to the product lines sold under the Allia product lines, with some few exceptions, it appears that most products are sold in Belgium/Luxembourg, France and the Netherlands, but not in Germany.

- (130) On the basis of the foregoing it would appear that the product coverage in Belgium/Luxembourg, Germany, France and the Netherlands is not identical. Moreover, a comparison of list prices shows that prices can vary up to almost [$< 50\%$]* for some identical products in Benelux, Germany and France. A further comparison of the net net prices in Belgium/Luxembourg, Germany and the Netherlands⁽²⁴⁾ shows that significant differences between prices exist, often exceeding [5 to 25]* percentage points.
- (131) The fact that the market position of the players differs significantly in France and Germany as compared with Belgium/Luxembourg and the Netherlands is a further indication that the conditions of competition are different. As already discussed, the market shares of the players vary significantly in neighbouring countries or regions. While Spinx has traditionally been the strongest player in the Netherlands and in Belgium/Luxembourg, it has only a minor presence in Germany and France. Similarly, Villeroy & Boch accounts for about [$< 30\%$]* of the German market, but has a weaker position in France and, in particular, in the Benelux area. Therefore, the Commission considers this to be a strong indication pointing towards different conditions of competition in these markets.
- (132) More similarities can, however, be found between Belgium/Luxembourg and the Netherlands. With regard to the product coverage, Sanitec has submitted that some [$< 100\%$]* of the parties' individual models sold in the Netherlands are also sold in Belgium/Luxembourg and vice versa. The analysis of Sanitec's product coverage above indeed shows that most products sold in Belgium/Luxembourg are also sold in the Netherlands. There are some differences in the range of products available in the two countries, but the number of specific models sold only in one country is very small. The same brands are used in Benelux by all large manufacturers of ceramic sanitary ware, too. Some Dutch customers have explained that, should the prices in the Netherlands rise, they could source — and actually have done so in the past — a large part of the products in Sanitec's product lines they normally source in the Netherlands also in Belgium/Luxembourg. Therefore, although some differences exist in the products supplied in those countries, these differences are not considered to be significant.

⁽²³⁾ Allia branded products are not shown separately for the Netherlands because they are distributed by Keramag's sales organisation in the Netherlands. In other words, any sales made by Allia to the Netherlands would be registered under sales made by Keramag there.

⁽²⁴⁾ Sanitec has not been able to submit net net prices for France.

- (133) A comparison of the net net prices between Belgium/Luxembourg and the Netherlands shows that there are some differences in the prices of identical products in the two countries. These differences are not, however, significant. Price differences tend to be generally below [<10]* percentage points, exceeding this figure only for some specific products. Sanitec has explained that although the list prices and rebate systems differ in Belgium/Luxembourg and the Netherlands, the net net prices paid by wholesalers are more or less the same in the two EEA countries. Some customers have explained that the price differences in the two countries used to be significant some 10 years ago. However, according to these wholesalers prices have been more or less the same over the past five years.
- (134) According to Sanitec, the distribution structure is almost identical in Belgium/Luxembourg and the Netherlands. By way of example, in all those countries, some [80 to 95%]* of ceramic sanitary ware is distributed directly from the manufacturers to wholesalers. Moreover, a factor pointing towards a wider geographic market is the fact that a number of large wholesalers are present both in the Netherlands and also in Belgium/Luxembourg. Examples of wholesalers/DIY stores with presence in both countries are Plieger, Technische Unie, Raab Karcher, Bricorama and Intergamma. It is also noted that [...] wholesalers in the Benelux, [...] both have central purchasing offices in the Netherlands. The parties' sales both in Belgium/Luxembourg and the Netherlands go via their central purchasing offices and the rebates granted are accounted for on their total purchases through these central purchasing offices.
- (135) Finally, as already indicated, the market structure in Belgium/Luxembourg and the Netherlands is more homogeneous as compared with that in Germany and in France. Sphinx has traditionally been the strongest player in the Netherlands and, until very recently, the clear market leader also in Belgium/Luxembourg. With regard to the other players, however, the Commission notes that the position varies to some extent. Apart from Villeroy & Boch, whose market position is more or less the same in the three countries, the market shares of the other players vary. Most importantly, Ideal Standard accounts for some [<30]* of the ceramic sanitary ware market in Belgium/Luxembourg but only some [<5]* of that in the Netherlands. Both Duravit/Laufen's and Kohler's market shares in the Netherlands are only some [<60]* of those in Belgium/Luxembourg. Therefore, while the position of Sphinx has been strong both in Belgium/Luxembourg and the Netherlands, the fact that all other players are stronger in Belgium/Luxembourg with higher market shares would appear to suggest that the conditions of competition vary, at least to some extent, in the three countries.

Conclusion on continental Europe

- (136) On the basis of the foregoing, the Commission considers that there are several factors pointing towards the existence of a geographic market including the whole of the Benelux area, but not Germany or France. On the other hand, the existence of national price lists, the differences in the net net prices and the diverging market positions of the competitors would in particular seem to suggest that the market conditions vary, which would point to the existence of purely national markets.
- (137) The exact definition of the relevant geographic market can, however, be left open because, following the Commission's investigation and based on third party comments, and as will be shown below, even if assessing the operation on a national level, the operation would not lead to the creation or strengthening of a dominant position in this part of the EEA or in any substantial part thereof. For the same reasons, the issue whether this geographic market should also include Germany and/or France can be left open because the assessment of the case would not be materially affected in this respect.

VI. COMPATIBILITY WITH THE COMMON MARKET AND WITH THE FUNCTIONING OF THE EEA AGREEMENT

A. OVERVIEW

1. Preliminary remarks

- (138) The operation will combine the activities of the second and fifth largest European producers of bathroom products. Although both producers offer a large range of bathroom products, ceramic sanitary ware constitutes the most important business of each producer. Sanitec has traditionally held a very strong position in the Nordic area whereas Sphinx has been the market leader in Benelux. Sphinx entered the Nordic area in 1994 by its acquisition of the Swedish company Gustavsberg AB whereby Sphinx became the second largest competitor in that area.
- (139) As explained above, the narrowest possible markets where competition takes place are at the level of individual products and at a national level. Based on the information provided by Sanitec, the operation would result in overlaps in most of the individual products in all EEA countries. However, the overlaps whereby the parties would reach combined market shares of 15% and above would be confined to WCs, WC cisterns, washbasins, bathtubs, shower trays and shower screens in one or more of the following EEA countries: Belgium/Luxembourg, Denmark, Finland, France, Germany, Iceland, the Netherlands, Norway and Sweden.

(140) The following analysis will be carried out primarily at the level of individual EEA countries. However, the analysis will also include the alternative broader product market definition (i.e. ceramic sanitary ware) and the wider alternative geographic market definition (i.e. Nordic area) in order to demonstrate that the competitive assessment would not materially change in either alternative.

2. European bathroom product market

(141) The overall demand in the market for bathroom products has been rather static and in some cases decreasing. The industry follows closely the trends in the housing, construction and refurbishment markets. Thus, the stagnation in the construction industry in many west European countries in the early 1990s had a negative impact on the overall market for bathroom products. In 1996 and 1997, most European countries started to see an improvement in total construction output growth and this upward trend has continued. Although the development has differed between EEA countries, the overall trend has been one of decline in the core products (i.e. ceramic sanitary ware, bathtubs, taps and mixers) in value terms, whereas the volumes of these products have generally recovered by one or two percentage points since 1996. According to forecasts made by GB Consult, modest volume growth both in the EEA as a whole and on national level is expected during the next five years.

(142) The bathroom product market, and the ceramic sanitary market in particular, show the signs of a mature market. There is little product innovation and differentiation and the products normally have long life cycles. No material fluctuations have occurred in the market shares of the main European manufacturers during the last three years and, moreover, there have not been major market entries in recent years.

(143) Sanitec has estimated that the value of the total European bathroom market in 1998 was EUR [8 000 to 10 000]* million. Ceramic sanitary ware constituted around [$< 30\%$]*, bathtubs and shower trays around [$< 10\%$]* each and shower screens/enclosures/cubicles around [$< 20\%$]*.

3. Overall European supply structure

(144) The European bathroom products industry is characterised by a high and growing level of

restructuring and concentration. In recent years, bathroom product manufacturers have mainly increased their market positions by acquisitions of existing brands rather than new entries and/or innovations. The most significant recent transactions leading to the consolidation of the European bathroom product market have been Sanitec's acquisition of Allia/Keramag, Sphinx's acquisition of Gustavsberg, Ideal Standard's acquisition of Blue Circle, Laufen's acquisition of Duravit and Roca's recently announced acquisition of Duravit/Laufen.

(145) Ideal Standard, Sanitec, Duravit/Laufen, Roca, Sphinx and Villeroy & Boch are the major players in the European bathroom product market and, in particular, in the ceramic sanitary ware market. Generally, the largest European suppliers have their strongest presence in their domestic markets although they are often present in several EEA countries. By way of illustration, Laufen is strongest in Switzerland, Roca is strongest in Spain, Sanitec in the Nordic countries and Sphinx in the Netherlands. Another characteristic of these suppliers is that they offer more or less the whole range of bathroom products. In contrast, there are also some suppliers of a considerable size who specialise in particular products, for example, the German company Friedrich Grohe which is only active in taps and mixers. Moreover, there are many smaller suppliers which either limit their business activities to a national, or at the most a regional market, and/or specialise in certain bathroom products. By way of example, the Swedish company Svedbergs has a fairly broad range of bathroom products but is only active in the Nordic countries whereas the Spanish Metaliberica specialises in certain bathtubs, shower trays and hydrotherapy products and is active in several EEA countries.

B. CONTINENTAL EUROPE

1. Belgium/Luxembourg

(a) Actual competition

(146) Ceramic sanitary ware constitutes around [$< 20\%$]* of the total bathroom market in Belgium/Luxembourg. In 1998, the volume of the ceramic sanitary market was estimated by Sanitec at approximately [800 000 to 900 000]* pieces and the value at approximately EUR [20 to 30]* million.

(147) The market shares of the parties and their main competitors are given in Table 1.

Table 1 ⁽²⁵⁾**Market shares of producers of ceramic sanitary ware in Belgium/Luxembourg**

	Ceramic sanitary ware		Washbasins		WCs	
	Volume	Value	Volume	Value	Volume	Value
Sanitec	[< 20 %]*	[< 20 %]*	[< 15 %]*	[< 15 %]*	[< 30 %]*	[< 20 %]*
Sphinx	[< 30 %]*	[< 30 %]*	[< 15 %]*	[< 15 %]*	[< 40 %]*	[< 30 %]*
Total	[< 40 %]*	[< 50 %]*	[< 30 %]*	[< 30 %]*	[< 60 %]*	[< 50 %]*
Ideal Standard		[< 30 %]*		[< 30 %]*		[< 30 %]*
Duravit/Laufen		[< 20 %]*		[< 20 %]*		[< 20 %]*
Roca		[< 10 %]*		[< 10 %]*		[< 10 %]*
Villeroy & Boch		[< 10 %]*		[< 10 %]*		[< 10 %]*
Kohler/J. Delafon		[< 5 %]*		[< 5 %]*		[< 5 %]*

- (148) As can be seen from Table 1, the parties would become the market leader both in the overall ceramic sanitary ware market as well as in washbasins and WCs individually. However, all major producers of ceramic sanitary ware offering equivalent products are active in Belgium/Luxembourg unlike the Nordic countries where the presence of other competitors is marginal.
- (149) The parties would face strong competition in particular from Ideal Standard, which would account for some [< 30%]* of the markets following the operation. The parties would have a leading position in WCs and in ceramic sanitary ware as a whole but, with regard to washbasins, the market position of the parties and Ideal Standard would be very similar. There exist also other strong competitors on the market, such as Duravit/Laufen, Roca and Villeroy & Boch, with well-known and strong brands, long-term presence and experience on the market. It should also be noted that, if the announced merger between Roca and Duravit/Laufen proceeds, these two players would have a combined market share similar to that of Ideal Standard.
- (150) A recent example of competitors picking up the market leader's market position clearly shows that competitive market conditions exist in Belgium/Luxembourg. Sphinx, which has traditionally been strong in Belgium/Luxembourg, has lost market share rapidly there. In fact, Sphinx's market share fell in 1996 to 1998 from some [< 50%]* to some [< 30%]* in the overall market of ceramic sanitary ware (in value terms). Hence, Sphinx has lost more than [< 30%]* percentage points of market share in only three years. While Sanitec has managed to pick up some of Sphinx's market share, the majority has been taken over by Duravit/Laufen. This shows that demand is indeed shifting.
- (151) The investigation has also shown that most customers in Belgium/Luxembourg source from at least two or three producers, the number of suppliers of ceramic sanitary ware being often even higher. This means that, unlike in the Nordic countries, the customers are usually familiar with more than one producer. For the suppliers this means that they have the necessary customer contacts and do not need to build their customer base from scratch, as in the case of new entry. Therefore, should the parties raise prices, customers could switch a large part of ceramic sanitary ware currently sourced from the parties to other suppliers.
- (152) None of the customers contacted by the Commission in the course of its investigation have expressed concerns over the effects of the proposed operation in Belgium/Luxembourg. Instead, they have confirmed that competitive alternatives exist on the market and that they would indeed switch suppliers if faced with a price increase of the order of 5% to 10%. Given that the average duration of a supply contract is normally one year at the maximum, customers are not tied to an existing supplier for an unreasonable period of time and switching is therefore feasible. Moreover, there are indications that the commercial relationships between customers and suppliers have not traditionally been as long term as in the Nordic countries.

⁽²⁵⁾ In the following, account will be taken only of 1998 figures. However, on the basis of the information in the notification, the market shares have in general been relatively stable over the past three years.

(b) *Supply-side substitutability*

(153) The Commission's investigation shows that there is supply-side substitutability in ceramic sanitary ware. Any attempt from the combined entity to raise prices could be met with a relatively rapid supply-side response from the competitors. The Commission's investigation shows that, as long as the producer has a cast for a particular model, switching the production to this particular model can take place relatively rapidly. Switching would take at most three months, which is the overall life cycle of a cast in the production cycle, but could easily take place more quickly, too, by simply replacing an existing cast with another one. No significant retooling or additional equipment would be needed and there would be no major costs involved in such a switch either. As already indicated above, all competitors have product lines and models which they already sell in Belgium/Luxembourg. Switching production would thus not require any development of new products or models. Furthermore, the Commission's investigation has shown that overcapacity exists on the market and therefore possible constraints in this respect would not limit the supply-side response.

(154) On the basis of the foregoing, the Commission considers that the supply-side substitutability is sufficient to constrain the behaviour of the combined entity.

(c) *Market entry*

(155) As already shown, the investigation has confirmed that market entry normally takes place via acquisitions of existing, national brands. With regard to Belgium/Luxembourg, however, direct entry is not entirely ruled out. As evidence of this, it is to be noted that, within a few years, Sanitec has been able to build a market presence of some [$<10\%$]* from scratch in Belgium/Luxembourg. This supports the assumption that the Belgium/Luxembourg market may not be as foreclosed as the Nordic market.

(156) Sphinx is the only producer with a production facility in Belgium/Luxembourg. The other players have sales offices and source their sales from their factories mainly in Germany. Although it can be argued that, from the point of view of logistics and transport costs, it may be an advantage to have local production, the fact that, for instance, Ideal Standard currently accounts for more than [$<30\%$]* of the market in Belgium/Luxembourg

supports the Commission's finding that producers supply from certain production outlets mainly the country of production but also the neighbouring countries. Therefore, it would appear that a market operator can be successful in the Belgium/Luxembourg market even without local production.

(157) Finally, given the current trend towards concentration in the European bathroom product market, it is reasonable to assume that further consolidation will create new players who are able to challenge the parties' combined position in Belgium/Luxembourg. Most importantly, Laufen and Roca, who have only recently announced their merger, are likely to improve their position in a number of countries, including Belgium/Luxembourg.

(d) *Conclusion on Belgium/Luxembourg*

(158) On the basis of the foregoing, the Commission does not consider that the parties would be able to maintain their market position if, following the operation, they were to increase prices. Therefore, the Commission does not consider that the notified operation would lead to the creation or strengthening of a dominant position in Belgium/Luxembourg as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

2. The Netherlands(a) *Actual competition*

(159) Ceramic sanitary ware constitutes around [$<30\%$]* of the total bathroom market in the Netherlands. In 1998, the volume of the ceramic sanitary market in the Netherlands was estimated by Sanitec at approximately [1 800 000 to 2 000 000]* pieces and the value approximately EUR [70 to 80]* million. Based on the figures provided by Sanitec, the market has grown significantly over the period 1996 to 1998, [$<20\%$]* in terms of value, but it is expected to stagnate in the near future.

(160) The market shares of the parties and their main competitors are presented in Table 2.

Table 2

Market shares of producers of ceramic sanitary ware in the Netherlands

	Ceramic sanitary ware		Washbasins		WCs	
	Volume	Value	Volume	Value	Volume	Value
Sanitec ⁽²⁶⁾	[< 5 %]*	[< 10 %]*	[< 5 %]	[< 10 %]*	[< 5 %]*	[< 10 %]*
Sphinx	[< 50 %]*	[< 60 %]*	[< 50 %]*	[< 50 %]*	[< 60 %]*	[< 70 %]*
Total	[< 50 %]*	[< 60 %]*	[< 50 %]*	[< 50 %]*	[< 60 %]*	[< 70 %]*
Villeroy & Boch		[< 10 %]*		[< 10 %]*		[< 10 %]*
Duravit/Laufen		[< 10 %]*		[< 10 %]*		[< 10 %]*
Kohler (J. Delafon)		[< 5 %]*		[< 5 %]*		[< 5 %]*
Ideal Standard		[< 5 %]*		[< 5 %]*		[< 5 %]*
Vitra (Eczacibasi)		[< 5 %]*		[< 5 %]*		[< 5 %]*

- (161) As can be seen from Table 2, the parties would become the market leader both in the overall ceramic sanitary ware market as well as in washbasins and WCs individually. The parties' combined market position in these markets would be somewhat stronger than in Belgium/Luxembourg. The parties would have market shares in the region of [<60%]*, exceeding [<70%]* only for WCs in value terms.
- (162) It should be noted that some customers, such as Technische Unie and Plieger, have central purchasing offices for Benelux in the Netherlands. Therefore, given that part of the sales attributed to the Netherlands are actually sold in Belgium/Luxembourg, Sanitec has estimated that up to [<5%]* of the parties' market share should be deducted from their market shares in the Netherlands. Consequently, the parties' combined market shares in the Netherlands should be lower than indicated in Table 2.
- (163) It should also be noted that the increment of market share resulting from the operation is relatively low, only some [<10%]*.
- (164) Market shares are only one indication reflecting market power of the players. Therefore, the Commission considers that market shares alone do not necessarily indicate dominance but that there are other considerations to be taken into account. For the reasons set out below, the Commission does not consider that the notified operation would lead to the creation or strengthening of a dominant position in the Netherlands.
- (165) First, although the parties' combined position would appear to be relatively strong in the Netherlands, it is to be noted that Sphinx's market shares have been declining in recent years. The Dutch market has traditionally been Sphinx's home market where Sphinx has been the market leader for many years but its market share has decreased by some [<20%]* percentage points over the period 1996 to 1998, from [<70%]* to some [<60%]* for ceramic sanitary ware. The lost market share has been picked up mainly by Sanitec and [...]*.
- (166) Sphinx has lost considerable market share during this period, which has been a period of strong growth in the Dutch market. At present, there is overcapacity on the market, with indications of falling price levels. On the basis of the investigation, the total market is expected to stagnate in the near future. It can therefore be assumed that the market conditions will not favour the present positions of Sphinx.
- (167) In addition, in line with the situation in Belgium/Luxembourg, the Commission's investigation has shown that customers in the Netherlands tend to apply multiple sourcing strategies. There are indications that customers source from at least two or three ceramic sanitary ware suppliers and, moreover, that the

⁽²⁶⁾ [...]*.

customers who source from Sphinx also source considerable amounts of bathroom products from other alternative suppliers at the same time. Indeed, there are several competitors on the Dutch market, [...] * Villeroy & Boch, [...] * Duravit/Laufen, Kohler and Ideal Standard. All four competitors are resourceful suppliers with well-known and well-established brands as well as long-term presence and experience on the market. Therefore, should the parties raise prices, customers could switch a large part of ceramic sanitary ware currently sourced from the parties to other suppliers.

(b) *Supply-side substitutability*

(168) The Commission notes first of all that Sphinx's position is historically very strong and, on the basis of its market share, Sphinx appears to be the preferred choice of many of the customers in the Netherlands. The existence of a relatively high level of brand loyalty can make it difficult to persuade customers to switch to other products and, therefore, for new suppliers to enter the market. The Commission considers, however, that the traditional preference for Sphinx's products does not necessarily mean that the parties' market position would be maintained, should the parties raise prices following the operation.

(169) The Commission considers that, for the same reasons that apply for Belgium/Luxembourg, there is supply-side substitutability in ceramic sanitary ware in the Netherlands. Furthermore, the Commission considers that the supply-side substitutability is sufficient to constrain the market power of the merged entity in the Netherlands. In this respect, the Commission notes that, as in Belgium/Luxembourg, all the main competitors are active in the Netherlands, although with lower market shares as compared with Belgium/Luxembourg. However, the Commission considers that most competitors in the Dutch market have the readiness, capacity and financial strength to increase their market position there. Consequently, in the eventuality of a price increase by the parties, the existing models, knowledge of the market and customer contacts together with overcapacity on the market would lead to a quick supply-side response and an increased market penetration by the competitors.

(170) Comments from third parties indicate that the majority of the market is price sensitive and that the switch from one competitor to another can be immediate. Indeed, all Dutch customers who replied to the Commission's enquiries have indicated that, should the parties raise prices by 5 to 10%, they could switch to other

suppliers. None of them have raised any serious concerns about the transaction.

(c) *Market entry*

(171) As already discussed, Sphinx has traditionally enjoyed a strong position in its home market but this position has been somewhat eroded during recent years. As in Belgium/Luxembourg, Sanitec has managed to penetrate the Dutch market within a few years and take some [$<10\%$]* of the market. Another player, the Turkish manufacturer Eczacibasi, has also been able to penetrate the Dutch market.

(172) Finally, a further consolidation in the European bathroom product market can be expected to change the market situation in the Netherlands, too. Roca, which currently has no activities in the Dutch market, can be expected to increase its presence there due to its recent merger with Duravit/Laufen.

(d) *Conclusion on the Netherlands*

(173) The market investigation of the Commission has confirmed that, despite the high market shares of the parties in some product markets, supply-side substitutability is significant and actual and potential competitors are able to act as a counterweight on the Dutch market. Therefore, the Commission does not consider that the notified operation would lead to the creation or the strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

3. Germany

(174) Germany is the largest single bathroom product market in Europe, accounting for some [$<40\%$]* of the whole European market. Sanitec has estimated that the total value of the German bathroom product market in 1998 was some EUR [2 500 to 3 500]* million. The value of the ceramic sanitary ware market was estimated at EUR [250 to 450]* million, corresponding to some [8 000 000 to 10 000 000]* pieces.

(175) In Germany, the parties' combined market shares exceed 15% in washbasins and WCs and the overall ceramic sanitary ware. The market shares are given in Table 3.

Table 3

Market shares of producers of ceramic sanitary ware in Germany

	Ceramic sanitary ware		Washbasins		WCs	
	Volume	Value	Volume	Value	Volume	Value
Sanitec	[< 40 %]*	[< 30 %]*	[< 30 %]*	[< 40 %]*	[< 40 %]*	[< 30 %]*
Sphinx	[< 5 %]*	[< 5 %]*	[< 5 %]*	[< 5 %]*	[< 5 %]*	[< 5 %]*
Combined	[< 40 %]*	[< 30 %]*	[< 30 %]*	[< 40 %]*	[< 40 %]*	[< 30 %]*
Villeroy & Boch		[< 20 %]*		[< 20 %]*		[< 20 %]*
Duravit/Laufen		[< 20 %]*		[< 20 %]*		[< 20 %]*
Vitra/Eczacibasi		[< 15 %]*		[< 15 %]*		[< 15 %]*
Ideal Standard		[< 10 %]*		[< 10 %]*		[< 10 %]*
Roca		[< 5 %]*		[< 5 %]*		[< 5 %]*

(176) As can be seen from Table 3, the parties' combined market shares would be below some [< 40%]* in all affected markets. Sphinx has only minor activities in Germany. The overlap of the parties in all the affected markets is less than [< 5%]*; which the Commission considers insignificant⁽²⁷⁾.

is not indicative of a dominant position being created there.

4. France

(177) The Commission notes that although the parties will become market leaders in all affected markets, other competitors have significant market shares. The parties will face strong competition in particular from Villeroy & Boch and Duravit/Laufen, which both account for some [< 20%]* of the markets. The Turkish importer Vitra/Eczacibasi has achieved a substantial foothold in the German market with some [< 20%]* and Ideal Standard accounts for approximately [< 10%]* of the market. Villeroy & Boch and Ideal Standard have significant domestic production and Germany is traditionally considered as their home market. Moreover, most of the competitors also offer a wide range of bathroom products comparable with that offered by the parties.

(179) The total value of the French bathroom product market has been estimated to amount to EUR [1 to 1 500]* million. According to information provided by Sanitec, the French ceramic sanitary ware market comprises approximately [6 500 000 to 7 500 000]* pieces with a value of EUR [200 to 300]* million; bathtubs [550 000 to 650 000]* with a value of EUR [50 to 60]* million; and shower trays [600 000 to 700 000]* pieces with a value of EUR [30 to 40]* million.

(180) The parties have overlapping activities, where their combined market shares exceed [< 20%]*, in the overall market for ceramic sanitary ware and in the markets for washbasins and WCs, in bathtubs and shower trays.

(178) On the basis of the foregoing, and in particular given the existence of several strong competitors, the Commission considers that competitive conditions exist on the German market and the parties' market position

(181) On the basis of the abovementioned market volumes and values, the market shares of the parties and their main competitors in ceramic sanitary ware are given in Table 4.

⁽²⁷⁾ [...]*.

Table 4

Market shares of producers of ceramic sanitary ware in France

	Ceramic sanitary ware		Washbasins		WCs	
	Volume	Value	Volume	Value	Volume	Value
Sanitec	[< 20%]*	[< 20%]*	[< 20%]*	[< 30%]*	[< 20%]*	[< 20%]*
Sphinx	[< 10%]*	[< 10%]*	[< 10%]*	[< 10%]*	[< 10%]*	[< 10%]*
Combined	[< 30%]*	[< 30%]*	[< 30%]*	[< 40%]*	[< 30%]*	[< 30%]*
Ideal Standard		[< 20%]*		[< 20%]*		[< 20%]*
Kohler/J. Delafon		[< 15%]*		[< 15%]*		[< 15%]*
Villeroy & Boch		[< 15%]*		[< 15%]*		[< 15%]*
Roca		[< 10%]*		[< 10%]*		[< 10%]*
Duravit/Laufen		[< 5%]*		[< 5%]*		[< 5%]*

- (182) With regard to ceramic sanitary ware, the parties will become the market leader but their combined market shares do not exceed [< 40%]*. Moreover, a larger number of other bathroom product manufacturers are present in France with substantial market shares; Ideal Standard accounts for some [< 20%]* of the market, Kohler about [< 15%]* and Villeroy & Boch and Roca around [< 15%]* of the market each.
- (183) The market shares of the parties and those of their main competitors with regard to bathtubs and shower trays are given in Table 5.

Table 5

Market shares of producers of bathtubs and shower trays in France

	Bathtubs		Shower trays	
	Volume	Value	Volume	Value
Sanitec	[< 10%]*	[< 15%]*	[< 30%]*	[< 30%]*
Sphinx	[< 5%]*	[< 5%]*	[< 10%]*	[< 15%]*
Combined	[< 15%]*	[< 20%]*	[< 40%]*	[< 40%]*
Kohler/J. Delafon		[< 30%]*		[< 15%]*
Roca		[< 20%]*		
Merloni (MTS)		[< 20%]*		
Ideal Standard		[< 15%]*		[< 15%]*
Aqualine		[< 10%]*		[< 5%]*
Villeroy & Boch				[< 15%]*
Sarreguemines				[< 15%]*

- (184) With regard to bathtubs, Kohler [...] will remain the market leader with some [< 30%]* of the market. Manufacturers such as Roca, Merloni and Ideal Standard also have substantial market shares. As for shower trays, the parties will become market leaders with some [< 40%]* of the market. There are, nevertheless, several other competitors with market shares [< 20%]* active on the market.

- (185) Contrary to the situation in the Nordic countries, it is to be noted that the major competitors are active in ceramic sanitary ware as well as in bathtubs and shower trays and, thus, these competitors have a broad range of products comparable with that offered by the parties.
- (186) On the basis of the foregoing, the Commission considers that the notified operation will not lead to the creation of a dominant position in any of the markets discussed above in France.

5. Overall conclusion for continental Europe

- (187) On the basis of the foregoing, the Commission considers that the notified concentration will not lead to the creation or strengthening of dominant positions in any relevant product market in Belgium/Luxembourg, the Netherlands, Germany or France.

C. THE NORDIC AREA

1. Ceramic sanitary ware

(a) Actual competition

- (188) The parties and their brands have a very strong historical market position in the Nordic countries. As will be shown below, Sanitec and Sphinx together would account for between some [55% to 95%]* of the Nordic ceramic sanitary ware market while other competitors are only marginally present there.

(i) Sweden

- (189) Sanitec has estimated that in 1998 the volume of the ceramic sanitary ware market in Sweden was approximately [600 000 to 700 000]* pieces and the value approximately EUR [35 to 45]* million. GB Consult foresees that from 1999 the market should recover due to the predicted rise in construction investment, especially in new construction, and gradually grow until 2003.
- (190) As a result of the operation, the parties would become by far the strongest player in all affected markets in Sweden. The market shares are illustrated in Table 6 (28).

Table 6

Market shares of producers of ceramic sanitary ware in Sweden

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	55-65 %	55-65 %	55-65 %	55-65 %	< 60 %*]	< 60 %*]	< 60 %*]	< 60 %*]
Sphinx	25-35 %	25-35 %	25-35 %	25-35 %	< 40 %*]	< 30 %*]	< 40 %*]	< 30 %*]
Combined	80-90 %	80-90 %	80-90 %	80-90 %	< 90 %*]	< 90 %*]	< 90 %*]	< 90 %*]
Svedbergs		< 5 %*]		< 5 %*]		< 10 %*]		< 10 %*]
Caradon		< 5 %*]		< 3,0 %		< 3,0 %		< 3,0 %
Villeroy & Boch		< 5 %*]				< 3,0 %		< 3,0 %
Duravit/Laufen		< 5 %*]				< 3,0 %		< 3,0 %
Ideal Standard		< 5 %*]				< 3,0 %		< 3,0 %
Muscle Machine				< 20 %*]				

(28) Sanitec has not been able to provide the Commission with reliable market shares for washbasins. In particular, the Commission has found that the parties' estimates on Muscle Machine's market shares for washbasins have proved to be incorrect. Therefore, in the following tables, the market share data for washbasins allocated both to the parties and Muscle Machine reflects the Commission's best estimates and are given as ranges. Furthermore, given that the market shares allocated to washbasins have an impact on the market shares on the overall ceramic sanitary ware market, the market share figures for the parties have been given as estimates in this column, too.

- (191) It can be seen from figures in Table 6 that the parties would reach very high market shares in Sweden in WCs, cisterns and washbasins. The market shares would exceed [$<90\%$]* both in terms of volume and value. With regard to washbasins, Sanitec in its notification has submitted that Muscle Machine accounts for some [$<50\%$]* of the Swedish market for washbasins. However, it appears from the Commission's market investigation that Muscle Machine in fact toll-produces its products under the brand names of its immediate customers, [...]*. Therefore, the market share allocated to Muscle Machine by Sanitec cannot be considered to reflect Muscle Machine's market power as a competitor. Rather, the market share should in fact be divided among its immediate customers, among others the parties. However, such a reallocation of Muscle Machine's sales would disclose business secrets of Muscle Machine and, moreover, for the purpose of the present assessment such a reallocation would not materially change the Commission's assessment. The Commission has therefore estimated that the correct market share allocated to Muscle Machine should be in the region of [$<20\%$]* at the maximum.
- (192) The market position of the parties would not change even taking the ceramic sanitary ware market as a

whole. The main competitors to the parties would have in general terms less than [$<10\%$]* of the market each, the only exception being Muscle Machine which would have some [$<20\%$]* of the market in washbasins.

(ii) Finland

- (193) Sanitec estimates that, in 1998, the volume of the ceramic sanitary ware market in Finland was approximately [450 000 to 550 000]* pieces and the value approximately EUR [25 to 35]* million. GB Consult has estimated that the market will continue to grow in 1999 and then decline slightly so that the market will reach the same level in 2003 as in 1998.
- (194) In Finland, the parties would also have very high market shares just as in Sweden and become the market leader in all affected markets. The market shares are set out in Table 7.

Table 7

Market shares of producers of ceramic sanitary ware in Finland

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	70-80%	60-70%	65-75%	55-65%	[$<80\%$]*	[$<80\%$]*	[$<80\%$]*	[$<80\%$]*
Sphinx	5-10%	5-10%	5-10%	5-10%	[$<15\%$]*	[$<15\%$]*	[$<15\%$]*	[$<15\%$]*
Combined	80-90%	70-80%	70-80%	60-70%	[$<95\%$]*	[$<90\%$]*	[$<95\%$]*	[$<95\%$]*
Svedbergs		[$<5\%$]*		[$<5\%$]*		[$<10\%$]*		[$<10\%$]*
Cersanit		[$<5\%$]*		< 3,0%		< 3,0%		< 3,0%
Villeroy & Boch		[$<5\%$]*				< 3,0%		< 3,0%
Roca		[$<5\%$]*				< 3,0%		< 3,0%
Caradon		[$<5\%$]*				< 3,0%		< 3,0%
Muscle Machine				[$<20\%$]*				
Novotec				[$<5\%$]*				
Swemolit				[$<5\%$]*				

(195) As in Sweden, the parties would become by far the strongest player in WCs, WC cisterns and washbasins with market shares up to [$<95\%$]*. Taking the ceramic sanitary ware market as a whole, the parties' combined market shares would exceed [$<80\%$]*. The competitors would be weakest in WCs and WC cisterns, where the second largest competitor would have merely [$<10\%$]* of the market. In washbasins, the largest competitor, Muscle Machine, would have only some [$<20\%$]* of the market (with respect to the further reduction of Muscle Machine's market share see recital 191). The rest of the competitors would have less than [$<10\%$]* of the market.

(196) With regard to washbasins, however, the Commission considers that the parties' market share should actually be somewhat higher than the figure given by Sanitec since the parties' overall market share for ceramic sanitary ware is also higher. If the market share data available for other Nordic countries are considered, it can be seen that the market shares for individual

products follow closely the overall market shares allocated for the ceramic sanitary ware market as a whole.

(iii) Denmark

(197) According to Sanitec's estimates, in 1998, the volume of the ceramic sanitary ware market in Denmark was approximately [550 000 to 650 000]* pieces and the value approximately EUR [30 to 40]* million. GB Consult forecasts that the market will decrease until 2001 and, thereafter, the market is expected to grow again.

(198) As indicated in Table 8, the parties would become the market leader in all affected markets where they would also yield very high market shares.

Table 8

Market shares of producers of ceramic sanitary ware in Denmark

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	60-70 %	60-70 %	60-70 %	55-65 %	[$<70\%$]*	[$<70\%$]*	[$<70\%$]*	[$<70\%$]*
Sphinx	15-25 %	15-25 %	5-10 %	5-10 %	[$<20\%$]*	[$<20\%$]*	[$<20\%$]*	[$<20\%$]*
Combined	80-90 %	80-90 %	70-80 %	60-70 %	[$<90\%$]*	[$<90\%$]*	[$<90\%$]*	[$<90\%$]*
Villeroy & Boch		[$<10\%$]*		[$<5\%$]*		[$<10\%$]*		[$<10\%$]*
Duravit/Laufen		[$<5\%$]*		< 3,0 %		< 3,0 %		< 3,0 %
Caradon		[$<5\%$]*		< 3,0 %		< 3,0 %		< 3,0 %
Svedbergs		[$<5\%$]*		< 3,0 %		< 3,0 %		< 3,0 %
Cersanit		[$<5\%$]*				< 3,0 %		
Muscle Machine				[$<20\%$]*				
Geberit								[$<10\%$]*

(199) The parties' combined market shares in Denmark would exceed [$>70\%$]* for most product groups, even when considering the ceramic sanitary ware market as a whole. The position of competitors would be weakest in WCs and WC cisterns, with the strongest competitor having merely some [$<10\%$]* of the market. In washbasins, where the parties would have a combined market share of between [55%]* and [85%]*, the main competitor would be Muscle Machine with some [$<20\%$]* of the market (with respect to the further reduction of Muscle Machine's market share see recital 191). Villeroy & Boch would have [$<5\%$]* of the market, and Duravit/Laufen, Caradon and Svedbergs would all have market shares below [$<5\%$]*.

(200) For the same reasons as given for Finland, the Commission considers that the parties' market share for washbasins as given by Sanitec should be higher,

because the parties' overall market share for ceramic sanitary ware is also higher.

(iv) Norway

(201) In 1998, the volume of the ceramic sanitary ware market in Norway was estimated to be approximately [350 000 to 450 000]* pieces and the value approximately EUR [20 to 30]* million. According to GB Consult, the market will be fairly stable in 1999 and will subsequently decrease due to the negative construction forecasts.

(202) The market structure and the position of the parties in Norway would be similar to the Swedish, Finnish and Danish markets. As indicated in Table 9, the parties would have very high market shares and become market leader in all affected markets.

Table 9

Market shares of producers of ceramic sanitary ware in Norway

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	65-75%	65-75%	65-75%	65-75%	[$<70\%$]*	[$<70\%$]*	[$<70\%$]*	[$<70\%$]*
Sphinx	15-25%	15-25%	15-25%	15-25%	[$<30\%$]*	[$<30\%$]*	[$<30\%$]*	[$<30\%$]*
Combined	80-90%	80-90%	80-90%	80-90%	[$<90\%$]*	[$<90\%$]*	[$<90\%$]*	[$<90\%$]*
Villeroy & Boch		[$<5\%$]*		[$<5\%$]*		$<3,0\%$		$<3,0\%$
Svedbergs		[$<5\%$]*		$<3,0\%$		$<3,0\%$		$<3,0\%$
Caradon		[$<5\%$]*		$<3,0\%$		$<3,0\%$		$<3,0\%$
Ideal Standard		[$<5\%$]*				$<3,0\%$		$<3,0\%$
Vitra/Eczacibasi		[$<5\%$]*				$<3,0\%$		
Muscle Machine				[$<20\%$]*				
Swemolit				[$<10\%$]*				
Geberit								$<3,0\%$

(203) As can be seen from Table 9, the parties would have market shares close to [$<95\%$]* in all product markets and also in the overall market for ceramic sanitary ware (with respect to the market share of Muscle Machine see recital 191).

(v) Iceland

- (204) Sanitec estimates that the volume of the ceramic sanitary ware market in Iceland was approximately [35 000 to 45 000]* pieces and the value approximately EUR [1 to 2]* million in 1998.
- (205) The market shares of the parties and those of their competitors are given in Table 10.

Table 10

Market shares of producers of ceramic sanitary ware in Iceland

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	20-30 %	30-40 %	20-30 %	25-35 %	[< 30 %]*	[< 20 %]*	[< 30 %]*	[< 20 %]*
Sphinx	40-50 %	40-50 %	40-50 %	40-50 %	[< 60 %]*	[< 60 %]*	[< 60 %]*	[< 60 %]*
Combined	70-80 %	70-80 %	70-80 %	70-80 %	[< 80 %]*	[< 80 %]*	[< 80 %]*	[< 80 %]*
Roca		[< 10 %]*		[< 10 %]*		[< 10 %]*		[< 10 %]*
Villeroy & Boch		[< 10 %]*		[< 10 %]*		[< 10 %]*		[< 10 %]*
Caradon		[< 5 %]*		< 3,0 %		< 3,0 %		< 3,0 %
Cersanit		[< 5 %]*				< 3,0 %		< 3,0 %
Svedbergs		[< 5 %]*				< 3,0 %		< 3,0 %
Muscle Machine				[< 20 %]*				
Swemolit				[< 10 %]*				

- (206) In Iceland, although the combined market position of the parties would be similar to the one identified in all the other Nordic countries in the sense that the parties would have high market shares and become market leaders in all affected markets, it is to be noted that Sphinx has, at present, the leading market position in WCs and WC cisterns and washbasins in Iceland.
- (207) Following the operation, the parties would become the clear market leader in WCs, WC cisterns and washbasins with market shares of between some [< 80 %]* and [< 90 %]*. This position would not change considering the ceramic sanitary ware market as a whole. The largest competitor, Roca, would have less than [< 15 %]* of the markets and Villeroy & Boch less than [< 10 %]*. Other competitors include Caradon and Svedbergs with very low market shares.

(vi) The overall Nordic area

- (208) Sanitec has estimated that the Nordic area would account for approximately [< 10 %]* of the total value of the EEA-wide bathroom product market, corresponding to some EUR [400 to 500]* million and some [2 to 3]* million pieces in 1998.
- (209) With respect to ceramic sanitary ware products, Sanitec has estimated that, in 1998, the overall Nordic market accounted for a volume of [2 000 000 to 3 000 000]* pieces and a value of EUR [100 to 150]* million. Based on these volume and value figures, the overall position of the parties and their main competitors are indicated in Table 11.

Table 11

Market shares of producers of ceramic sanitary ware in the Nordic countries

	Ceramic sanitary ware		Washbasins		WCs		WC cisterns	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	60-70%	60-70%	55-65%	55-65%	[< 70%]*	[< 70%]*	[< 70%]*	[< 70%]*
Sphinx	15-25%	15-25%	15-25%	10-20%	[< 30%]*	[< 30%]*	[< 30%]*	[< 30%]*
Combined	80-90%	80-90%	70-80%	70-80%	[< 90%]*	[< 90%]*	[< 90%]*	[< 90%]*
Svedbergs		[< 5%]*		[< 5%]*		[< 5%]*		[< 5%]*
Villeroy & Boch		[< 5%]*		[< 5%]*		[< 5%]*		[< 5%]*
Laufen		< 3,0%		< 3,0%		< 3,0%		< 3,0%
Caradon		< 3,0%		< 3,0%		< 3,0%		< 3,0%
Cersanit		< 3,0%		< 3,0%		< 3,0%		< 3,0%
Muscle Machine				[< 20%]*				
Roca		< 3,0%				< 3,0%		< 3,0%
Ideal Standard		< 3,0%		< 3,0%		< 3,0%		< 3,0%

(210) As can be seen from Table 11, the parties would have market shares of between [<80%]* and almost [<100%]* in WCs, WC cisterns and washbasins, even considering the Nordic countries as one relevant geographic market. The leading market position would also be retained for the ceramic sanitary ware market as a whole.

(211) Compared with the above market data on individual countries, the market position of the parties would not materially change whether the geographic market was to be considered as one overall Nordic market or as individual markets.

(b) *Supply-side substitutability*

(212) Sanitec has contended that the existence of high market shares in the Nordic countries does not in itself confer

market power, since it is easy for large, strong competitors such as US multinationals American Standard/Ideal Standard and Kohler to compete effectively in these countries. The Commission investigation, however, clearly refutes Sanitec's argument of effective competition in the Nordic countries. Sanitec has submitted that the switching costs between suppliers are very low for customers and that suppliers are even willing to contribute to costs in return for the customer switching to them. Sanitec has therefore argued that, should the price level for bathroom products rise, there are numerous players that could increase their presence in Scandinavia or enter the market. According to Sanitec, this is very easy due to low transport costs. Sanitec has further argued that there is overcapacity — in the EEA, in south-eastern Europe and south-east Asia — in the bathroom products industry, meaning that any price increase would provoke immediate entry, thus constraining the parties' ability to raise prices.

(213) Most customers have, however, replied to the Commission that they would not have real alternatives

to switch suppliers if faced with a price increase in the order of 5% to 10%. Some customers have indicated that, if faced with a price increase in the region of 5% to 10%, they would consider importing from Asia or Poland. However, given that these customers source relatively small volumes and they would still need to stock the parties' leading brands, the Commission does not consider this alternative to be realistic. Some large wholesalers have indicated that the demand for other than the leading brands is not sufficient for them to import at competitive prices. Furthermore, these customers have indicated that imports over a long distance could take up to several months and the risk of product failure and breakage is too high. Customers have also mentioned that after-sales services would be problematic if products were imported over a long distance. Given that some critical mass has to be achieved for the imports to be competitive, importing from outside the EEA cannot be considered a realistic alternative for small customers.

- (214) Furthermore, on the basis of its investigation, the Commission does not consider it feasible either that these wholesalers could to a significant extent switch their branded, well-reputed products to low-cost imports from outside the EEA. Given the current low level of imports, there are no indications that the level of imports would increase to any significant extent in the future with the effect of off-setting the market position of the parties. Finally, the current low level of imports, despite the fact that few alternative suppliers are available in the Nordic countries, strengthens the argument that imports are not a feasible alternative for customers.

(c) *Market entry*

- (215) The majority of wholesalers have indicated that Ido, Ifö and Gustavsberg are more or less the norm in the Nordic countries and that these are the brands customers demand. As discussed in recitals 102 to 108, there are different national standards which make entry difficult. With regard to the Nordic countries, some wholesalers have gone so far as to suggest that Sanitec and Sphinx, through the acquisition of Gustavsberg, have in fact created a Nordic 'umbrella' with specific products and product standards, which makes it particularly difficult for competitors to enter the Nordic market.

- (216) The Commission's investigation shows, that should the price level for bathroom products rise, competitors

could not, in a relatively short period of time, increase their presence in the Nordic countries. This situation appears to be very different from that in the Benelux area, where the competitors, even though they have lower market shares than the parties, are well established and increasing their presence. This would also seem to suggest that, unlike continental Europe, the Nordic area is relatively isolated and local production is an important competitive advantage. At present, only Sanitec and Sphinx have production facilities in the Nordic area.

- (217) The tradition and loyalty behind the established brands in the Nordic countries are further evidenced by the fact that no new suppliers of importance have emerged in these markets for more than 20 years and that those new producers, such as Muscle Machine, which have entered the market in recent years are active in niche products and/or are specialised in toll production.

(d) *Absence of buying power*

- (218) Sanitec argues that countervailing buying power is particularly present in the Nordic countries since a very limited number of wholesalers represent large proportions of the demand. Sanitec has estimated that, in Denmark, Dahl has some [$< 50\%$]* of the market, A & O Johansen [$< 20\%$]* and Rör & Armatur [$< 20\%$]*. In Finland, Onninen has [$< 80\%$]* of the market, Dahl [$< 20\%$]* and LV Tuko [$< 15\%$]*. Sanitec submits that in Norway, Dahl has [$< 50\%$]* of the market, Stavanger Rör [$< 30\%$]* and Bergens Rör [$< 20\%$]*. Finally, Sanitec estimates that in Sweden, Dahl has [$< 50\%$]* of the market, Ahlsell [$< 40\%$]* and Onninen [$< 20\%$]*. Sanitec claims further that consolidation is taking place at the wholesale and retail level in the Nordic countries. As examples of this Sanitec has mentioned Ahlsell, which has recently acquired the Swedish wholesaler Lando AB and a stake in the Finnish wholesaler Starckjohann; Dahl, which operates in a number of Scandinavian countries, acquired the Swedish wholesaler Skoogs VVS; and Sanistål, which acquired the Danish wholesalers Erik Hassel-Kjaer A/S and PE Ernhardt A/S.

- (219) Sanitec has further argued that the turnover of the wholesalers is often greater than that of the suppliers of bathroom products and that this would confer buying power. Moreover, Sanitec has argued that companies that may have limited bargaining power often collaborate in buying groups to increase their bargaining power. Finally, according to Sanitec,

wholesalers use their buying power for instance to threaten to switch to other suppliers or to establish their private label if prices are raised.

(220) The Commission refutes Sanitec's argument of countervailing buying power. Although the Commission notes that the wholesale market in the Nordic countries is indeed relatively concentrated, the Commission does not consider that the wholesalers in the Nordic countries have enough purchasing power to offset the market power of the combined entity.

(221) In particular, the Commission notes that in order to exercise buying power, wholesalers must have viable alternative suppliers they could switch to. It is clear from the investigation that this is not the case. The Commission's enquiries show that wholesalers in the Nordic countries switch to other suppliers very rarely, if at all. Most wholesalers have told the Commission that during the past three to five years they have not changed suppliers. Some wholesalers have indicated that Sanitec, for instance, has been their supplier for more than 50 years. Although Sanitec argues that supply contracts are short-term (generally one year) and that wholesalers can, within a short period of time, switch suppliers at low cost, the Commission's investigation shows that the supply relationships in the Nordic countries are in practice long-term and customers are very loyal to the established brands. An important difference between the Nordic countries and the Benelux area is that the wholesalers in Benelux have indicated that, in the face of a hypothetical price increase, they would readily change suppliers. There is also evidence that this has happened in the past and that the demand has shifted from the market leader to the competitors.

(222) The investigation also shows that buying groups are not sufficiently strong to counterbalance the position of the parties in the Nordic countries. The Commission has contacted two such groups mentioned by the parties, EDT and EUDIM⁽²⁹⁾, whose members also include Nordic customers. It is clear from the investigation that, with regard to bathroom products, both groups are mainly forums for exchanging information, collecting data, buying market studies and assisting in practical commercial matters. The groups do not act as direct purchasing organisations, although EUDIM negotiates framework agreements. However, according to EUDIM, it is very difficult to negotiate agreements for ceramic sanitary ware because design, culture and technical requirements prevent negotiations on 'the same product for everyone' basis. Furthermore, during its 20 years of existence, EUDIM has succeeded in negotiating only one such framework agreement with a ceramic sanitary ware producer, namely Duravit/Laufen. This must, however, be considered as an exceptional case, because Laufen

developed a specific washbasin together with EUDIM. According to EUDIM, it has failed to conclude agreements with any other strong, branded European ceramic sanitary ware suppliers, mentioning Sanitec as an example. The Commission notes, however, that these groups could influence the buying power of the wholesalers in the long run in that they may recommend their members to use a certain supplier and receive bonuses from this supplier at the end of the year. However, there is no evidence at present that such activities would increase the buying power of these groups' Nordic members to the level where they could offset the parties' dominant position.

(223) With regard to Sanitec's submission that, in the face of a price increase, wholesalers would start producing their own private labels, the investigation shows that few wholesalers in Scandinavia have private labels. Similarly with imports, the traditionally strong position of Sanitec and Sphinx via Gustavsberg has made it very difficult for the introduction of cheaper private labels. On the basis of third party comments, it appears that at present only a very small part of the sales includes private labels. Currently, there are no indications that, within the near future, wholesalers would switch a considerable part of their product range to a private label so as to counterbalance the position of the parties.

(224) Lastly, concerning Sanitec's submission that the size of the turnover of the customer should be taken as evidence of buying power, the Commission notes that all wholesalers mentioned by Sanitec, such as Dahl, are active in a number of other products. Bathroom products account for only a part of the turnover generated by those wholesalers and, therefore, large turnover alone cannot be taken as evidence of countervailing buying power.

(225) On the basis of the foregoing, the Commission does not consider that customers in the Nordic countries have sufficient buying power to offset the market position of the parties, in particular due to lack of feasible alternative suppliers.

(e) *Third party comments*

(226) Most third parties and, most importantly, customers have voiced serious concerns about the effects of the

⁽²⁹⁾ European United Distributors of Installation Materials.

operation in the Nordic countries. Both customers and competitors have been concerned that the operation would lead to a significant reduction of competition in what is already a very concentrated market. Customers have expressed concerns over possible price increases and the weakening of their position vis-à-vis the parties. The fact that, after the operation, the parties would practically control all production in the Nordic countries has aroused fears in customers that the choice and availability of products would be limited in the future. Competitors have expressed concerns that the operation would lead to a total foreclosure of the market, which is already extremely difficult to enter.

(f) *Conclusion on ceramic sanitary ware*

(227) Sanitec's very high market shares, combined with their stability over a long period of time, the barriers to entry and the absence of buying power lead the Commission to conclude that, at present, Sanitec has a dominant position in the Nordic countries in ceramic sanitary ware. The fact that the gap between Sanitec's market shares and those of the competitors has, over a long period of time, been substantial is a further indication that Sanitec has been able to act relatively independently on the market, keeping its sales prices and profit margins⁽³⁰⁾. Furthermore, Sanitec's position has not been challenged by imports, which have remained at a low level.

(228) The operation would result in a considerable aggregation of market shares which would reinforce Sanitec's very high existing market shares. As already stated, all other players are only marginally present in the Nordic countries. Furthermore, the Commission notes that Sphinx, in addition to Sanitec, is the only alternative full-range supplier of products with a significant market share in the Nordic countries. Other competitors are mainly active in niche markets.

(229) The investigation has shown that Nordic customers are currently sourcing a large proportion of their supplies from Sanitec. In the absence of viable alternative suppliers, Nordic customers would be even more dependent on supplies from Sanitec. Sanitec would thus be able to employ a number of strategies to further advance its position in the market which were not previously available to it. It could for instance raise prices independently from other market operators, worsen the supply conditions or even refuse to supply altogether.

(230) The fact that the operation would lead to the elimination of the only viable alternative supplier with significant presence in the Nordic countries could lead to further foreclosure of the market from prospective entry. Given the significant brand loyalty in this sector and the well-established position of Gustavsberg in the Nordic countries, the acquisition would mean that any potential entrant would be denied the possibility of entering the Nordic market by buying a strong existing brand. The operation could foreclose the market also from direct entry. Given that wholesalers would be dependent on the new entity, Sanitec could punish those customers who encouraged alternative suppliers to enter the market by, for instance, making those customers pay higher prices or imposing tougher supply conditions. Customers would therefore have less incentive to switch to new entrants.

(231) On the basis of the foregoing, the operation would enable Sanitec to act on the market even more independently of its customers and competitors than today and the Nordic market could be further foreclosed. Therefore, the operation would lead to the strengthening of Sanitec's dominant position in the Nordic markets for ceramic sanitary ware.

2. Bathtubs

(a) *Actual competition*

(i) *The individual Nordic countries*

(232) With regard to the individual Nordic countries, the value and volume of each bathtub market is as follows: Sweden: [40 000 to 50 000]* pieces and EUR [9 to 10]* million; Finland: [3 500 to 4 500]* pieces and EUR [<1]* million; Denmark: [10 000 to 15 000]* pieces and EUR [2 to 3]* million; and Norway: [15 000 to 20 000]* pieces and EUR [3 to 4]* million⁽³¹⁾. Based on these figures, it can be seen that Sweden is by far the most important country for the sale of bathtubs in the Nordic area.

(233) The market shares of the parties and their main competitors are shown in Table 12 for Sweden, Finland, Denmark and Norway.

⁽³⁰⁾ [...]*.

⁽³¹⁾ [...]* that [the bathtub]* market will therefore not be assessed separately in this context.

Table 12

Market shares of producers of bathtubs in individual Nordic countries

	Sweden		Finland		Denmark		Norway	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	[< 40%]*	[< 40%]*	[< 40%]*	[< 50%]*	[< 30%]*	[< 20%]*	[< 50%]*	[< 40%]*
Sphinx	[< 40%]*	[< 40%]*	[< 40%]*	[< 30%]*	[< 10%]*	[< 15%]*	[< 15%]*	[< 15%]*
Total	[< 80%]*	[< 80%]*	[< 70%]*	[< 70%]*	[< 40%]*	[< 30%]*	[< 60%]*	[< 60%]*
Metaliberica						< 3,0%		[< 30%]*
Bette		< 3,0%		< 3,0%		[< 15%]*		< 3,0%
Merloni		< 3,0%		< 3,0%		[< 10%]*		< 3,0%
VVS Marketing		< 3,0%						< 3,0%
Aqua Novitek		< 3,0%		< 3,0%				
Svedbergs		[< 15%]*		[< 10%]*		< 3,0%		< 3,0%
Kaldewei		< 3,0%				< 3,0%		

(234) Today, Sanitec and Sphinx are the largest and the second largest bathtub suppliers in all the Nordic countries. With the exception of Denmark, the parties' combined market shares would range between [< 60%]* and almost [< 90%]* of the markets. The market positions of the main competitors are very fragmented with typically only one player of a reasonable size. The parties' largest competitor in Sweden and Finland is Svedbergs, in Denmark it is Bette and in Norway Metaliberica.

(235) It is to be noted that the market shares based on Sanitec's estimates leave more than [< 50%]* of the market unexplained in Denmark. In fact, the Commission considers that the actual market share of the parties should be considered to be higher than estimated by Sanitec. Indeed, the Commission's investigations show that neither Kaldewei nor Svedbergs supply bathtubs in Denmark. Moreover, none of the customers, who represent the largest wholesalers in Denmark, have indicated that they purchase bathtubs from Metaliberica or Merloni. Therefore, the Commission estimates that the parties' combined market share in Denmark should be considered at least to exceed [< 60%]*.

(236) Similarly, Sanitec has allocated almost [< 30%]* of the market in Norway to Metaliberica. However, none of the customers who replied to the Commission's enquiries have indicated that they buy bathtubs from Metaliberica. Therefore, the Commission does not exclude the possibility that also in Norway the market share of the parties would in fact be higher than that estimated by Sanitec.

(ii) The Nordic area

(237) With regard to the overall Nordic area, Sanitec has estimated that the total value of the market in 1998 was EUR [10 to 20]* million, corresponding to [80 000 to 90 000]* pieces.

(238) The market shares of the parties and their main competitors are shown in Table 13.

Table 13

Market shares of producers of bathtubs in the Nordic area

	Nordic area	
	Volume	Value
Sanitec	[< 40%]*	[< 40%]*
Sphinx	[< 30%]*	[< 30%]*
Total	[< 70%]*	[< 70%]*
Metaliberica		[< 10%]*
Bette		[< 10%]*
Merloni		[< 5%]*
VVS Marketing		< 3,0%
Aqua Novitek		< 1,0%

Sanitec and Sphinx are by far the largest bathtub suppliers in the overall Nordic area with a combined market position of more than [< 70%]*. The market shares of the remaining competitors are very fragmented. Metaliberica, which is the third largest player on the market, has a market share of [< 10%]*, Bette has [< 10%]*, Merloni [< 5%]* and the remaining competitors less than [< 5%]* of the market.

(b) *Market entry*

(239) The Commission's investigation shows that the parties' brands in the Nordic bathtub market have an important position in the Nordic countries and that brand loyalty among customers is as strong as in ceramic sanitary ware. Moreover, given that the parties are the only large and powerful suppliers with a broad range of bathroom products and that most competitors in bathtubs are specialised manufacturers, the Commission considers that entry into the Nordic bathtub market for those competitors is particularly difficult. Unlike full-range suppliers Sanitec and Sphinx, those companies are not able to establish and further strengthen their position on the bathtub market with the support of other products.

(240) On the basis of the foregoing, and in line with the analysis of ceramic sanitary ware, the Commission considers that barriers to entry into the Nordic market are high.

(c) *Absence of buying power*

(241) On the basis of the investigation, customers in the bathtub market are the same as in ceramic sanitary ware. Therefore, in line with the analysis conducted on buying power in ceramic sanitary ware (see recitals 220 to 225), the Commission does not consider that customers for bathtubs have sufficient buying power to offset the dominant position of the parties resulting from the operation.

(d) *Conclusion on bathtubs*

(242) On the basis of the foregoing, the Commission considers that the proposed operation would lead to the creation of a dominant position in bathtubs in the individual Nordic countries or, alternatively, in the overall Nordic area as a whole.

3. Shower screens(a) *Actual competition*(i) *The individual Nordic countries*

(243) With regard to the individual Nordic countries, Sanitec has estimated that the value and volume of each shower screen market is as follows: Sweden: [100 000 to 150 000]* pieces and EUR [20 to 30]* million; Finland: [30 000 to 40 000]* pieces and EUR [5 to 10]* million; Denmark: [40 000 to 50 000]* pieces and EUR [5 to 10]* million; and Norway: [90 000 to 100 000]* pieces and EUR [20 to 30]* million⁽³²⁾. The market shares of the market participants are indicated in Table 14.

⁽³²⁾ [...] that [the shower screen]* market will therefore not be assessed separately in this context.

Table 14

Market shares of producers of shower screens in individual Nordic countries

	Sweden		Finland		Denmark		Norway	
	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Sanitec	[< 30%]*	[< 30%]*	[< 20%]*	[< 20%]*	[< 20%]*	[< 20%]*	[< 80%]*	[< 70%]*
Sphinx	[< 5%]*	[< 5%]*	[< 5%]*	[< 5%]*	[< 5%]*	[< 10%]*	[< 10%]*	[< 20%]*
Total	[< 30%]*	[< 30%]*	[< 20%]*	[< 20%]*	[< 30%]*	[< 30%]*	[< 90%]*	[< 90%]*
Svedbergs		[< 15%]*		[< 15%]*		[< 10%]*		[< 5%]*
Makro		[< 20%]*		< 3,0%				[< 10%]*
Combac		[< 10%]*		< 3,0%				< 3,0%
Kesko/Gent		[< 10%]*		[< 30%]*		[< 20%]*		[< 5%]*
Sanka		< 3,0%		[< 30%]*				
Flair						[< 10%]*		< 3,0%
Hüppe						[< 10%]*		
Geo						[< 10%]		

(244) As can be seen from Table 14, the parties would achieve a combined market position of some [< 90%]* in Norway. In the other Nordic countries, the parties' combined market shares would be between some [< 20%]* and [< 30%]*. Despite a more limited presence in Sweden and in Denmark, the parties would remain the market leader in those countries, too.

(ii) The Nordic area

(245) Sanitec has estimated that the total Nordic market for shower screens in 1998 was in the region of EUR [60 to 70]* million, corresponding to some [200 000 to 300 000]* pieces. The market shares of the parties and those of their competitors are given in Table 15.

Table 15

Market shares of producers of shower screens in the Nordic area

	Nordic area	
	Volume	Value
Sanitec	[< 40%]*	[< 40%]*
Sphinx	[< 5%]*	[< 10%]*
Total	[< 50%]*	[< 50%]*

	Nordic area	
	Volume	Value
Gent		[< 15%]*
Makro		[< 10%]*
Svedbergs		[< 10%]*
Combac		[< 10%]*
Flair		[< 10%]*
Sanka		[< 10%]*
Geo		< 3,0%
VVS Marketing		< 3,0%
Hüppe		< 3,0%

(246) Following the operation, the parties would achieve a combined market share of some [< 50%]*, both in terms of volume and value, in the overall Nordic area. According to the information submitted by Sanitec, Gent accounts for [< 15%]* of the Nordic market whereas Makro and Svedbergs each have [< 10%]* of the market. Combac and Flair each account for [< 10%]* of the market. The remaining competitors are very fragmented.

(b) *Effects on competition*

(247) With regard to shower screens, as indicated in Table 14, Sanitec is at present market leader and dominant in the Norwegian market with a market share of [$<70\%$]*. The second competitor there is Sphinx with a share of [$<20\%$]*. Thus, the parties would achieve a combined market share of [$<90\%$]*, which the Commission considers to be a strengthening of Sanitec's dominant position for the same reasons as set out for ceramic sanitary ware (see recitals 227 to 231).

(248) With regard to the overall Nordic area, the Commission considers that the proposed concentration could lead to the creation of a dominant position on the market in shower screens at Nordic level. Given the parties' very strong position in ceramic sanitary ware in the Nordic countries and the fact that the parties are virtually the only full-range suppliers in that area, this could give them the possibility of further increasing their sales of shower screens. The parties could use their high profit margins in ceramic sanitary ware and bathtubs to set the prices for shower screens at a considerably lower level than competitors. This would squeeze the competitors and, eventually, drive them out of this market.

(c) *Conclusion on shower screens*

(249) On the basis of the foregoing, the Commission considers that the notified operation would lead to the strengthening of a dominant position in Norway or, alternatively, to the creation of a dominant position in the overall Nordic area in the market for shower screens.

4. Overall conclusion on the Nordic area

(250) For all the above reasons, the Commission has come to the conclusion that the notified transaction is incompatible with the common market and the functioning of the EEA Agreement, since it would lead to the strengthening of a dominant position, as a result of which effective competition would be significantly impeded within the common market within the meaning of Article 2(3) of the Merger Regulation, in the ceramic sanitary ware market or, alternatively, in the markets for WCs, WC cisterns and washbasins in the Nordic countries or, alternatively, in Denmark, Finland, Iceland, Norway and Sweden.

(251) The operation would further lead to the creation of a dominant position as a result of which effective competition would be significantly impeded in the market for bathtubs in the Nordic countries or, alternatively, in Denmark, Finland, Norway and Sweden.

Finally, the operation would lead to the strengthening of a dominant position in the market for shower screens in Norway or, alternatively, lead to the creation of a dominant position in the market for shower screens in the overall Nordic area, as a result of which effective competition would be significantly impeded in this part of the EEA.

VII. COMMITMENTS PROPOSED BY SANITEC

(252) In order to resolve the competitive concerns raised by the Commission with respect to the Nordic countries and under the precondition that the conditions set out in Sanitec's offer document dated 17 June 1999 regarding Sphinx are fulfilled, Sanitec has, by letter of 26 October 1999, offered to enter into the following commitments.

A. DIVESTMENT OF THE GUSTAVSBERG BATHROOM PRODUCTS BUSINESS

1. Sanitec will divest the entire Gustavsberg bathroom products business of Sphinx in Sweden, Denmark, Finland, Norway, Iceland, Russia and the Baltic States which comprises:

- (i) the ceramic sanitary ware production company Gustavsberg VVS AB in Gustavsberg, Sweden;
- (ii) the taps and mixers company Gustavsberg Vårgårda Armatur AB (the 'Company') in Vårgårda, Sweden (subject to the conditions stipulated in point 4);
- (iii) the sales companies Gustavsbergs Försäljnings AB in Gustavsberg, Sweden; Gustavsberg VVS A/S in Rødovre, Denmark; Oy Gustavsberg Ab in Helsinki, Finland (including the sales companies in Estonia and Lithuania as well as the sales offices in Latvia, Ukraine and Russia); the branch office of Gustavsberg VVS AB in Oslo, Norway; and the distributorship agreement concerning Iceland;
- (iv) the 'Gustavsberg' brand name worldwide for any and all products; and
- (v) all other assets and liabilities that form part of the Business (as defined in point 5).

2. Sanitec undertakes to offer the prospective purchaser the possibility of entering into any subcontracting agreement presently concluded for the production of bathtubs sold by Sphinx under the brand name 'Gustavsberg', subject to the approval of the respective subcontractor. [...]*.

3. Sanitec undertakes to offer the prospective purchaser the possibility of entering into a subcontracting agreement according to which Sanitec shall continue to supply to the prospective purchaser shower screens/enclosures/cubicles sold by Sphinx under the brand name 'Gustavsberg' as part of the Business [...]*.
 4. Sanitec undertakes to offer the prospective purchaser the possibility of acquiring the Company within the time limit set out in point 9. [...]*.
 5. The undertakings referred to in points 1 to 4 are referred to in the following as 'the Business' to be divested.
 6. Sanitec undertakes to divest the Business as a single undertaking and shall pursue this alternative in the first place. However, this shall not preclude, subject to the Commission's explicit approval, that the Business may be divested as two or more business units provided that Sanitec has shown to the Commission that such divestments would be viable separately or together with the other activities of the purchaser and that such divestments would be at least as favourable for competition as a divestment of the Business as a single undertaking. In this context, a business unit refers to ceramic sanitary ware (and, if requested by the prospective purchaser, together with taps and mixers), shower screens/enclosures/cubicles, and bathtubs, respectively. Furthermore, the Business shall be divested as a going concern and, as such, shall include in particular its present facilities, equipment, machinery, inventories, goods in process and finished products as well as any rights concerning trade marks, patents, inventions, business secrets, technology, know-how, design and intellectual property of the respective products of the Business.
 7. Moreover, in order to enhance its commercial viability to prospective purchasers, the divestiture of the Business shall include, to the extent permitted by law or contract, the following, unless not required by the purchaser:
 - (i) the transfer of relevant sales staff currently engaged in the Business;
 - (ii) transfer of production and administrative personnel currently dedicated to the production facility of the Business;
 - (iii) the provision of manufacturing technical assistance at the production facility of the Business, for a period of not more than 12 months from the date of the sale. However, such assistance shall only be granted in circumstances where the purchaser cannot reasonably be expected to manage the technical matters himself or through resources existing within the Business;
 - (iv) Sanitec's best efforts to ensure that production capacity and selling activities are maintained, pursuant to good business practices, at their current level and that all contracts necessary to preserve the Business are entered into or continued in accordance with their terms, consistent with past practice and the ordinary course of business; and
 - (v) Sanitec's best efforts to procure the assignment to the prospective purchaser of other existing commercial arrangements (covering current supply agreements, sales contracts or business with customers, current subcontracting and distributorship agreements as well as other contracts entered into in the regular course of business in this respect).
 8. Furthermore, with respect to the staff of the Business, Sanitec shall, prior to completion of the sale of the Business to a purchaser, not hire or employ current management or staff from the Business.
- B. TIMING
9. In the event that the sale of the Business has not been completed by Sanitec within [...]* of the Commission's Decision, Sanitec undertakes to give the Trustee, referred to in point 15, an irrevocable mandate to find a valid purchaser for the Business and to complete the divestment of the Business within [...]* thereafter. The latter period can be prolonged by another [...]* by the Commission on reasonable grounds upon application from Sanitec. In the event that the Trustee has not been able to divest of the Business within the first [...]*, or alternatively within the second [...]* provided that such a prolongation has been granted by the Commission, the Business [...]*. Such divestiture shall take place prior to the end of the first [...]* period, or, alternatively, within the second [...]* period provided that such a prolongation has been granted by the Commission.
- C. THE PURCHASER
10. The prospective purchaser referred to in points 2, 3, 4, 6, 7, 8 and 9 shall be a viable existing or prospective competitor independent of and unconnected to Sanitec, possessing the financial resources and proven expertise in the field of bathroom products enabling it to maintain and develop the Business as an active competitive force

in competition to Sanitec's remaining business on the various markets concerned.

11. Sanitec, within the period of time set out in the first sentence of point 9 or, thereafter, the Trustee, shall indicate to the Commission whether it believes that a purchaser with which it is proposed to sign a letter of intent or a contract fulfils the description of a valid purchaser set out in point 10, and if it considers that negotiations with such a purchaser should continue. In doing so, Sanitec or, alternatively, the Trustee shall provide the Commission with a fully documented and reasoned proposal enabling the Commission to assess:
 - (i) whether the prospective purchaser satisfies the relevant purchaser criteria pursuant to the provisions of point 10;
 - (ii) the envisaged time of completion of the divestiture; and
 - (iii) whether the purchaser has, or reasonably can be expected to obtain, all necessary approvals from the competent regulatory bodies.

Prior to approval, the Commission may request to meet the prospective purchaser and, if deemed necessary, ask for the submission of business plans for the Business.

12. If the Commission has not within 10 (ten) working days following receipt of a fully documented proposal for a prospective purchaser expressed in writing its disagreement, negotiations with such party as a valid purchaser shall be free to proceed. In the case that the Commission has to request additional information, the receipt of such information shall constitute the starting point for the 10 (ten) working days referred to above.
13. Provided the offers concerned have been received from purchasers recognised as valid according to the procedure laid down in point 10, Sanitec alone shall be free to accept any offer or to select the offer it considers best in case the of a plurality of offers.

D. IMPLEMENTATION

14. Prior to and until completion of the sale of the Business, Sanitec undertakes to ensure that the Business is held separate and managed as a distinct and saleable entity with its own management accounts. Sanitec further undertakes that the Business shall have its own management, separate

and distinct from that of Sanitec's management that shall, under the guidance and control of the Trustee, be under instructions to manage it on an independent basis in order to ensure its continued viability, its market value and its independence from Sanitec. In addition, Sanitec undertakes that it shall make no structural changes to the Business without prior Commission approval.

15. Sanitec undertakes that, as soon as practicable after the Commission has adopted a favourable decision under the Merger Regulation and in any event no later than 10 (ten) working days after the Commission has adopted its decision, it shall appoint an independent trustee to be approved by the Commission in accordance with point 16 to act on its behalf in overseeing the ongoing management of the Business, to ensure its continued viability and market value and, provided Sanitec does not itself manage to sell the Business to a valid purchaser as defined in point 10 within the period of time set out in point 9, its rapid and effective divestiture from the rest of Sanitec's activities (hereafter referred to as 'the Trustee').
16. Sanitec's proposal of the appointment of the Trustee shall be deemed approved by the Commission, if the Commission has not within 10 (ten) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval. The Trustee must be an investment bank or similar institution, such as an auditing institution, having a proven expertise.
17. Together with Sanitec's request for approval of a proposed Trustee, Sanitec shall submit a proposed draft mandate setting forth in detail the scope of the mandate of the Trustee and the responsibilities to be performed under the mandate. Once the mandate has been concluded, Sanitec shall not make any changes to such mandate without the Commission's approval.
18. In addition to the tasks mentioned above, the Trustee's mandate shall include the following responsibilities:
 - (i) to monitor the satisfactory discharge by Sanitec of the obligations entered into according to the undertaking;
 - (ii) to provide every two months (or at the request of the Commission at such other reasonable times in the event of significant developments in the divestment process) written reports to the Commission on the progress of the discharge of the mandate, containing sufficient information to enable the Commission to assess all relevant developments in Sanitec's

negotiations in relation to the divestment of the Business and the time frame within which an agreement is expected. Such supporting documentation shall include a report by the management of the Business on its ongoing commercial operations;

(iii) to provide, in the event that the Trustee is to carry out the divestiture of the Business, the Commission with sufficient information on the prospective purchaser as described in point 10;

(iv) to manage the Business, pending the divestiture, on an independent basis in order to ensure its continued viability, market value and independence from Sanitec. In this respect, the Trustee shall:

- in consultation with Sanitec determine the best management structure to ensure the viability and marketability of the assets or businesses to be divested,
- monitor that Sanitec maintains the viability and marketability of the assets and/or business to be divested in accordance with this undertaking,
- monitor that no competitively sensitive information concerning the assets or the businesses to be divested is disclosed to Sanitec for any other purpose than to allow Sanitec to prepare for the divestiture, and
- independently exercise Sanitec's voting rights in the best interest of the Business.

19. Sanitec shall provide the Trustee with all assistance and information, including copies of all relevant documents, as the Trustee may reasonably require in order to carry out its mandate.

20. A independent arbitrator jointly proposed by Sanitec and the prospective purchaser and approved of by the Commission, shall, in the case of a dispute between Sanitec and the prospective purchaser and within the time limits set out in point 9, decide [...]*.

VIII. ASSESSMENT OF THE COMMITMENTS

(253) The Commission is satisfied that the commitments proposed by Sanitec are such as to prevent the creation or strengthening of a dominant position for ceramic sanitary ware, bathtubs and shower screens in the Nordic countries.

(254) The proposed divestments cover the entire Gustavsberg bathroom business and will thus ensure that a competitive alternative to Sanitec exists in the Nordic countries. Moreover, the divestments will remove the entire overlap of Sanitec and Sphinx in the Nordic countries, except for *de minimis* sales of ceramic sanitary ware sold under the brands Sphinx and Warneton. Given that these sales represent a market share of less than [$<10\%$]* in the overall Nordic area, they are considered to be insignificant and would thus not lead to a strengthening of Sanitec's dominant position for ceramic sanitary ware in any of the Nordic countries.

(255) The divestments will include the ceramic sanitary ware production plant in Gustavsberg, Sweden, from where Sphinx presently sources all its sales in the Nordic countries. With a capacity of [...]* pieces and a utilisation rate of [...]*, the plant is considered as a viable source of supplies for the Nordic countries. Furthermore, the divested business will also include the taps and mixers company Gustavsberg Vårgårda Armatur AB. Although the notified operation has not given rise to any separate competition concerns with respect to taps and mixers, several customers and competitors in their responses to the Commission's enquiries concerning the commitments indicated that also the taps and mixers business of Gustavsberg should be included in the sale of the company. Following further investigations, it became clear that the viability of Gustavsberg would be significantly improved if the acquirer of Gustavsberg was able to offer the full range of bathroom products. On the basis of the reaction from the market, the Commission therefore considers it important for the viability of the divested business that the purchaser will have the possibility of acquiring this business, should he so wish.

(256) In addition, given the importance of close and continuous customer relationships and knowledge of the respective markets, the sales companies form an important part of the divested business. Currently, the sales companies employ some 130 people in the Nordic area. Furthermore, the divestment of the brand name Gustavsberg worldwide for any and all products is crucial in a market where established brand names are very important. The Commission's market investigation has clearly confirmed that Gustavsberg is a significant brand in the Nordic markets.

(257) [...]*.

(258) On the basis of the foregoing, the commitments will contribute to the maintenance of competitive conditions for the sale of ceramic sanitary ware, bathtubs and shower screens in the Nordic area. Given that Sphinx, through Gustavsberg, is present in all Nordic countries, customers will have an additional independent source of supply which will offer a range of products similar to the ones offered by Sanitec.

(259) Finally, the terms and conditions for the divestitures, which are consistent with the Commission's practice, are considered adequate.

Aandelen NV Koninklijke Sphinx Gustavsberg and all the depositary receipts of ordinary shares in NV Koninklijke Sphinx Gustavsberg, is declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the commitments given by Sanitec to the Commission, as set out in Section VII of this Decision.

IX. CONCLUSION

(260) In light of the foregoing, the notified concentration should be declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the commitments given by Sanitec to the Commission, as set out in Section VII of this Decision,

Article 2

This Decision is addressed to:

Sanitec Ltd Oyj Abp
PO Box 447
FIN-00101 Helsinki
John Stenbergin ranta 2
FIN-00530 Helsinki

HAS ADOPTED THIS DECISION:

Article 1

Done at Brussels, 1 December 1999.

The concentration notified by Sanitec Ltd Oyj Abp on 1 July 1999, relating to the public offer for all outstanding ordinary shares not held by the Stichting Administratiekantoor

For the Commission
Mario MONTI
Member of the Commission