II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 February 1995

relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89

(Case No IV/M.477 — Mercedes-Benz/Kässbohrer)

(Text with EEA relevance)

(Only the German text is authentic)

(95/354/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Having regard to the Commission Decision of 14 October 1994 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations,

Whereas:

(1) This proceeding concerns the proposed acquisition of Karl Kässbohrer Fahrzeugwerke GmbH ('Kässbohrer'), Ulm, by Mercedes-Benz AG ('Mercedes-Benz'), Stuttgart.

(2) By decision of 5 October 1994, the Commission ordered the partial suspension of the concentration, pursuant to Article 7 (2) and Article 18 (2) of the Merger Regulation until it took a final decision.

(3) By decision of 14 October 1994, the Commission found that the notified concentration raised serious doubts as to its compatibility with the common market. The Commission accordingly initiated proceedings in the case pursuant to Article 6 (1) (c) of the Merger Regulation.

(4) Following an initial examination by the Advisory Committee on 9 January 1995, the Commission on 16 January 1995 sent the statement pursuant to Article 18 of the Merger Regulation in order to pursue clarification of the facts and circumstances. On 27 January 1995, a hearing took place of the undertakings involved in the merger and of third parties, at which further evidence was presented. The Advisory Committee discussed the draft of this Decision on 10 February 1995.

I. THE PARTIES

(5) Mercedes-Benz is a subsidiary of Daimler-Benz AG. The company manufactures cars, trucks, buses and vehicle components. Kässbohrer is a family-owned

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

company, which produces buses, coaches and specialized commercial vehicles.

II. THE OPERATION

(6) The operation is a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation.

(7) Mercedes-Benz is to acquire the whole of Kässbohrer through the purchase of all its shares. The agreements between the parties oblige Kässbohrer to divest itself of certain lines of business which are not related to the bus business, in so far as such divestitures have not already taken place before the take-over. Under the agreements, the lines of business to be divested include vehicles for preparing ski slopes, tanker and silo vehicles, and car transporters. Furthermore, Kässbohrer has ended a joint venture with Iveco, has sold the Aabenraa Karrosserifabrik A/S bus factory to Volvo, and has also sold the Bilcon A/S company through a management buy-out.

III. COMMUNITY DIMENSION

(8) The aggregate worldwide turnover of Mercedes-Benz and Kässbohrer is more than ECU 5 billion (Daimler-Benz group: ECU 50,473 billion, Kässbohrer: ECU 0,91 billion, the figures being for the financial year 1993). Each of the two undertakings achieves an aggregate Community-wide turnover of more than ECU 250 million. The two undertakings concerned do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension within the meaning of Article 1 of the Merger Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. RELEVANT PRODUCT MARKET

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

(10) The different requirements of different types of transport service mean that buses are very heterogeneous products. Broadly speaking the market can be described as having, at one extreme, low-floor city buses for public transport services in urban areas and at the other extreme, luxurious 15 metre double-decker touring coaches for long-distance tourist travel. A large number of different types exist in between, such as city buses partly with a low floor, scheduled-service intercity buses designed for suburban and short intercity travel, scheduled-service intercity buses for regional travel (the last two hereinafter referred to as 'intercity buses'), 'multipurpose' buses for both scheduled services and shorter tourist travel and single-deck touring coaches for travel over long distances. The list is not exhaustive, as other specialized types of bus exist. Furthermore, the various types of buses are available in different sizes. Heterogeneity is, therefore, great and demand very diverse, since the bus operator will demand a bus designed specifically for the transport services he expects to provide.

(11) Such diversity also means that the price range at which the various types of bus are sold is quite wide. In Germany prices range from about DM 350 000 for a standard city or intercity bus to more than DM 700 000 for the most expensive touring coaches.

(12) In the notification the parties defined the relevant market as the bus market. They supported their definition by saying that the registration statistics do not differentiate between different bus types. At the very most, taking into account the definition given by the Commission in previous cases (see recital 14), the parties could consider that two markets existed, one for city buses and another for coaches; the latter would include intercity buses. In the course of the proceeding the parties suggested that intercity buses, as defined separately by the Commission, were derived partly from touring coaches and partly from city buses and that they should be considered either as part of the market for touring coaches or as part of the market for scheduled-service buses operating in urban or intercity traffic.

(13) The parties' main contention that there is a single relevant market for all buses of, or over, eight tonnes licensed weight cannot be accepted. Clearly, there is no demand-side substitutability between a low-floor city bus with room for a large number of standing passengers and a double-decker touring coach with toilet, video and kitchen. As has been noted, there exists between these two extremes a range of different types of bus which, on the basis of their design and equipment, are suited to a large number of different purposes. In general it may be said that requirements in terms of technical

specifications and equipment, which determine the ride and travelling comfort for passengers, increase with the length of the distances for which the bus is primarily intended. Thus, such requirements increase in proportion to the extent to which a type of bus is intended more for touring than for scheduled services. However, contrary to the view taken by the parties, it cannot be deduced from this gradual transition to greater comfort and more luxurious equipment and from the resulting heterogeneity of buses that the market for buses consists of a single relevant market. The difficulty of determining a precise demarcation of the market within a broad and highly differentiated product range cannot be accepted as a reason for dispensing with a market definition altogether, despite the obvious lack of substitutability between particular products.

(14) In 1990 and 1991, the Commission took the view in two Decisions [1] concerning the French market that two markets — buses operating in public transport and touring coaches — would have to be distinguished. The Commission's investigations in this proceeding, focusing particularly on the German market, have shown, however, that, at least as far as the supply of products on the German market is concerned, three market segments must at present be distinguished, each of which constitutes a relevant market. On the basis of the functional differences as regards the purposes for which the buses are intended and the marketing concepts of the suppliers, the following three segments may be distinguished on the demand side:

(a) **City buses**

City buses are designed for public transport in urban areas. They tend to have a low floor without any steps as well as more doors than other types of bus, thus facilitating entry and exit. The main customers are municipal and local authorities.

(b) **Intercity buses**

Intercity buses are designed for public transport in rural districts and public intercity travel. Such buses are normally not particularly luxuriously equipped. From a technical point of view, they are for the most part not low-floor buses and have higher-power engines. The main customers are regional public bus operators as well as private companies operating scheduled services on a concessionary basis. Several of the public customers are also customers for city buses.

(c) **Touring coaches**

Touring coaches are aimed at the leisure market, mainly at long-distance tourist travel. Touring coaches tend to be higher than intercity buses and are equipped in a comparatively luxurious manner. They are often equipped with air conditioning, toilets and television screens, which make such buses more suitable for long trips. The main customers are private operators of leisure or charter trips.

(15) This division of the overall bus market into three segments is generally reflected in the sales literature of all the suppliers. It was also endorsed by the majority of the bus manufacturers surveyed by the Commission and by bus operators, i.e. the buyers. This division of the market into three segments also corresponds to the classification given in ECE Regulation No 36 on uniform provisions regarding the construction of vehicles for public transport (ECE = Economic Commission for Europe). This specifies three classes of bus, which are defined as follows:

'2.1.1. Vehicle of Class I means a city bus; a vehicle of this Class has seats and spaces for standing passengers.

2.1.2. Vehicle of Class II means an inter-urban bus or coach; a vehicle of this Class may have provision for standing passengers, but only in the gangway.

2.1.3. Vehicle of Class III means a touring coach; a vehicle of this Class has no provision for standing passengers.'

(16) The alternative view put forward by the parties, namely that intercity buses should in accordance with their technical derivation be allocated either to the city bus segment or to the touring coach segment, is not in line with demand-side substitutability. As far as demand on the German market is concerned, intercity buses derived from touring coaches are not interchangeable with touring coaches proper since the latter do not meet the requirements for state subsidization of buses in scheduled service traffic. By way of example, reference may be made here to the 'List

[1] Renault/Volvo, IV/M.004, Decision of 7 November 1990, point 15; Renault/Heuliez, IV/M.092, Decision of 3 June 1991, point 5.

of criteria for vehicle procurement' in the Land of North Rhine-Westphalia. This specifies that vehicles used in intercity transport must, in addition to numerous equipment specifications relating to the possible transport of standing passengers, have at least one double-width door and must not exceed a maximum floor height of 860 mm. At least this latter feature cannot be satisfied by bus types included below in the touring coach segment. Furthermore, in a strategy paper available to the Commission, Mercedes-Benz itself divided the market into touring coaches, intercity buses and city buses and emphasized the differing basic conditions in the individual segments. However, it should be noted that the point made by the parties regarding the technical derivation of intercity buses is of importance for flexibility in switching production within the bus market as a whole, as discussed below.

(17) However, even if the overall bus market is to be subdivided into three segments, this does not mean that there are rigid boundaries between the segments. Rather, there are degrees of substitutability between adjacent market segments, and the demarcation of the market is therefore fluid. This may be illustrated by the following survey of the product range of Mercedes-Benz and Kässbohrer.

Mercedes-Benz

Segment	Type	Description	Technical derivation
City buses	O405	Traditional city bus	
	O405N	Low-floor city bus	
Intercity buses	O404NÜ	Low-floor intercity bus	City bus
	O407	Intercity bus	City bus
	O408	Intercity bus	City bus
	O404RH-K	Multipurpose bus	Touring coach
Touring coaches	O340	Traditional touring coach	
	O404RH	Traditional touring coach	
	O404RHD	Traditional touring coach	
	O404SHD	Traditonal touring coach	

Kässbohrer

Segment	Type (new type series)	Description	Technical derivation
City buses	S215SL	Traditional city bus	Touring coach
Intercity buses	S215NR	Low-floor intercity bus	Touring coach
	S215UL (S315UL)	Intercity bus	Touring coach
	S215RL	Multipurpose bus	Touring coach
	S215HR (S315H)	Multipurpose bus	Touring coach
Touring coaches	S215HRI-GT (S315GT)	Traditional touring coach	
	S215HDH (S315HD)	Traditional touring coach	
	S216HDS	Traditional touring coach	
	(S328DT)	Double-decker touring coach	

(18) The above table shows that there is an overlap between the city bus and intercity bus segments, particularly as regards low-floor buses. Low-floor intercity buses differ from low-floor city buses in that they have a somewhat higher floor height and a more powerful engine. However, they should be usable in city transport as well, where low-floor buses have come to play a predominant role. According to the VDV (Verband Deutscher Verkehrsunternehmen), 77% of all city buses purchased in Germany in 1994 were low-floor buses. It is also of importance in this context that low-floor buses account for 12% of purchases in the intercity bus segment in 1994 and that the VDV expects this proportion to rise in future to 50%. It must therefore be anticipated that in future there will be greater overlaps between the city and intercity bus segments.

(19) There are similarly substantial overlaps between the intercity bus and touring coach segments. An important point here is that the private bus operators in particular are increasingly tending to use the same type of bus both for scheduled service transport and for touring and excursions. The product range shown above illustrates that the bus suppliers are moving to accommodate this trend. Whereas the Mercedes intercity bus

O405NU and the Kässbohrer intercity bus S215NR are suited only for scheduled service operation, the bus types O408 and S215UL can to a limited extend be used for touring and excursions as well. The multipurpose buses O408, O404RH-K and S215RL, S215HR are in general suitable for dual-purpose use. Multipurpose buses are specifically designed for dual use. They meet the average comfort requirements of touring and excursion transport. At the same time, they meet the economy requirements and the technical specifications applicable to scheduled service operation.

(20) In general, it can thus be said that, despite being allocated to a specific market segment, buses can increasingly be used for differing purposes. This applies particularly to private bus operators. According to the Bundesverband Deutscher Omnibusunternehmer eV (BDO), 90 % of private bus operators in Germany operate both in scheduled-service transport and in touring and excursion transport. About half of the private bus companies surveyed by the Commission indicated that they used buses in their fleets both for scheduled services and for touring and excursions. Such dual-purpose use probably occurs even more frequently with small bus companies having only a few buses, but these were not covered by the survey.

(21) Account must also be taken of the fact that considerable supply-side substitutability exists in bus production. This is in particular the case with intercity buses since, as it has been rightly stressed by the parties, they are derived partly from city buses and partly from touring coaches. Therefore, the entry barriers to the intercity bus market for a producer of either city buses or touring coaches are from a technical point of view relatively low. In general, the different types of bus can normally be produced in the same plant with the same machines, and there are many common components between them. Provided a supplier produces different types of bus, switching production from one type of bus to another is therefore not particularly difficult, and most of the big producers (Volvo, Scania, Mercedes-Benz, Renault, Iveco) have a full product range. By contrast, if a manufacturer is not present on the market for intercity buses, then a change of production to intercity buses would be more difficult, since significant development costs would be incurred.

(22) The abovementioned demand-side overlaps between the individual market segments and the supply-side substitutability do not justify the assumption of a single relevant market for all buses, since as explained there would always be quite considerable substitution gaps within such an overall market. However, the fluid boundaries between the segments and the flexibility on the supply side mean that the competitive positions of the suppliers on the individual relevant markets are relative. In assessing the impact of the merger, these market segments cannot be considered in isolation. Rather, competitive conditions and the position of the suppliers on the overall market must also be taken into account.

B. RELEVANT GEOGRAPHIC MARKET

(23) The western European bus producers are particularly strong in their home countries. *Market shares* close to or above 50 % are not unusual for the largest national producers: Renault has 66 % in France, Iveco has 54 % in Italy and 47 % in Spain, Leyland (Volvo) has 47 % in the United Kingdom and Volvo has 48 % in the Nordic countries. Germany has hitherto had a comparatively balanced supply structure, with four domestic suppliers with market shares of between 14 and 35 %.

(24) The *type of bus* demanded differs to some extent in the individual Member States. Public transport is more developed in northern and central Europe than in southern europe. There is also a longer tradition of long-distance bus travel in northern and central Europe. The intercity-bus segment, particularly that involving standardized buses, is largest in Germany and the Benelux countries. Furthermore buses are to some extent equipped differently in individual Member States. German bus operators traditionally demand a higher level of equipment than customers in most other European countries.

(25) Although it is essential for enterprises active at European level to know the price structure in different Member States in order to determine their business strategies, *price comparisons* between Member States are not an appropriate criterion here for defining the relevant geographic market. Price comparisons are made more difficult by the differences in equipment of buses. Furthermore, special conditions and rebates are common in the bus market, e.g. when a second-hand bus is traded in for a new bus. Mercedes-Benz and Kässbohrer apply uniform gross prices in western Europe. Differences in discounts — the discount applied by Kässbohrer in Germany is 10 % lower than abroad (about [. . .] [1] % against about [. . .] % on the list

[1] In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

price) — have to do with differing distribution structures, as was made clear at the hearing. Therefore, it is very difficult to determine the actual transaction price, thus making statistical price comparisons difficult. According to the market participants surveyed by the Commission, there is at most price transparency within one and the same Member State, as is the case in Germany. According to bus manufacturers, the differences in prices between countries like Belgium, the Netherlands, France and Germany are mainly due to differences in equipment.

(26) Buses have hitherto been subject to type-approval in each Member State. There is a variety of technical regulations which differ from one country to another (e.g. right-hand steering in the United Kingdom, emergency roof exits in Belgium and the Netherlands, non-inflammable seat covers and brake standards in France, rear emergency exists in Italy, heating in Sweden, etc.). Such different technical requirements limit to some extent the scope for parallel imports and facilitate the pursuit of different pricing policies in different countries. The parties counter this by referring to a regulation which entered into force in Germany on 1 January 1995 concerning EC type-approval (implementing Directive 70/156/EEC). The regulation applies in principle to all vehicles, but contrary to what the parties state it is not yet of any significance for buses, since there is still no directive on EC-wide agreed bus types. A directive on EC bus types is planned for 1997 to 1998, but will become mandatory only after a four to five-year transitional period. Specific technical aspects regarding buses have, however, already been harmonized by Community directives on vehicles.

(27) As was confirmed by the parties and by competitors, a manufacturer usually takes into account the differences between national standards in the design of a new model of bus. Customer requirements tend to differ even more than national regulations. Consequently, although they require time and some planning costs, type-approval procedures do not represent any major obstacle to market entry. Differing technical regulations within the EEA cannot therefore in themselves be regarded as sufficient grounds for assuming the existence of national markets.

(28) As explained below, there are particular features in the city bus, intercity bus and touring coach markets which suggest that they should at present still be defined as national markets. The *city bus market* in particular is at present still national. Although the Community public procurement Directive has led to more European-scale calls for tenders by public authorities and has thus started to increase the geographic scope of the market, actual purchasing behaviour by the public authorities is still distinctly national in this sector and has not yet changed the overall national character of this market. The same still applies at present to the *intercity bus* and *touring coach* markets, although there are signs of the markets opening up here. This is the case particularly with the touring coach market, as was confirmed by competitors. However, these markets still show several peculiarities, at least as far as Germany is concerned, which at present justify the assumption of national markets and which are detailed below.

Germany

(29) As in other Member States, the bus market in Germany is characterized by the presence of strong domestic suppliers (Mercedes-Benz, Kässbohrer, MAN and Neoplan). The four main domestic suppliers in Germany had a combined market share of about 95 % in 1993.

(a) *Imports*

(30) Imports of buses into Germany have until recently remained rather low, especially as far as city and intercity buses are concerned. The share of imports has shown a moderate increase in recent years, though it is still for the time being at a low absolute level. The market share (sales) of foreign buses (over eight tonnes in weight) increased from 2,2 % (88) in 1989 to 3,3 % (177) in 1991, 5,0 % (345) in 1993 and 5,6 % (320) in 1994 (extrapolation on the basis of January to November). In the touring coach market, the market share of imported buses in Germany is as much as 10,3 % (city buses 3,5 %, intercity buses 1,1 %). The particularly large increase in 1991/92 was due to the surge in demand in the new *Länder* following German unification. In 1994, sales decreased to about 320 buses. However, this decrease, amounting to 7 %, was much less than the decrease in total market volume in 1994 (18 %). It can be expected that, with the increase they have achieved, foreign suppliers have established a foothold in Germany or at least in particular regions. While it is true that imports as a whole still account for only 5 % of market volume, this must be seen against the background of the fact that it is only in the past few years that there have been any imports at all into Germany and that the annual increases have been substantial.

(31) The rather low level of imports into Germany hitherto is linked to the strong competition as described below between a number of efficient German bus manufacturers supplying a broad

product range in all segments of the bus market (see recital 49). Furthermore, German suppliers are by far the biggest exporters in the European Union, with about 30 % of their bus production being exported. However, it emerged from the hearing of the parties and of the German associations of private and public bus operators that all the large foreign manufacturers have in recent times been able to supply the products demanded by German customers.

(32) The competitive structure of the market has in the past ensured a price/performance ratio which fulfilled the needs of German customers. There has accordingly hitherto not been any particular incentive for German customers to switch from current preferences for German suppliers and components and from established customer-supplier relationships. These intangible market entry barriers have tended to create a national market. These barriers together with the tangible entry barriers are discussed below. An in-depth analysis of the barriers will, however, take place within the framework of the competitive assessment (see point C.III.3.c), since the evaluation of those entry barriers is crucial to the analysis of the effects of the merger on the competitive structure in Germany and the EEA.

(b) *Tangible market entry barriers*

(33) An important demand-side criterion for the purchase of a bus is the existence of a *service and repair network* operated by the relevant manufacturer. The German bus manufacturers mentioned above all have such a network. Large foreign suppliers which are also commercial vehicle manufacturers (Volvo, Renault, Scania and Iveco) have such a service network for lorries and could extend this to include buses without any major financial investment (see point C.III.3.c). Non-integrated foreign manufacturers wishing to enter the German market could use the existing service networks of their component suppliers and would otherwise have to bear only the relatively small additional costs required for establishing a network of contracted garages.

(34) During the Commission's investigations, *buy-back prices and conditions* for used buses traded in for new buses and *switching costs* (costs for training, tools and spare parts stocks made necessary by any change in supplier) were also mentioned as entry barriers for new and, in particular, foreign suppliers (see recitals 91 *et seq.*). However, both of these elements represent cost factors which, according to the Commission's investigation, are accorded only limited importance by suppliers and customers.

(c) *Intangible market entry barriers*

(35) While the tangible entry barriers discussed above represent financially measurable costs and can be overcome by appropriate investment if market entry is intended, there are in addition two intangible barriers in the bus market, especially for intercity buses and touring coaches. These are established *customer-supplier relationships* and *brand loyalty*. These intangible barriers, which are not based solely on economic and technical considerations, have in the past made market entry by foreign suppliers difficult (see recitals 82 *et seq.*). Similar barriers also exist in other Member States, for example in France, the United Kingdom and Italy.

(36) Established customer-supplier relationships were evident particularly in the case of private buyers, which are primarily small and medium-sized enterprises. Personal relationships are of less importance for public buyers. Nevertheless, both customer categories have hitherto preferred German makes. In the German coach sector, this has been partly an image factor.

(d) *Effects of the EC public procurement Directives*

(37) German bus operators falling within the scope of the EC Directive which coordinates the procurement procedures for the water, energy, transport and telecommunications sectors (Council Directives 90/531/EEC and 93/38/EEC) have since 1 March 1994 been obliged to invite tenders on a EEA-wide basis. This was the date on which Directive 90/351/EEC was transposed into German law (Regulation on the awarding of public contracts of 22 February 1994); Directive 93/38/EEC has not yet been transposed into German law. The Directive applies not only to awarding entities which are public authorities and public undertakings, but also to private undertakings which operate on the basis of special or exclusive rights granted by a competent authority of a Member State, such as private bus operators granted an authorization to operate a network (concession). Where awarding a contract for the supply of buses, a public invitation to tender has to be issued where the value of a contract is ECU 400 000 or more; if the purchase volume is ECU 750 000 or more, a periodic notice has to be inserted in the *Official Journal of the European Communities* at least once a year.

(38) The public procurement Directive applies in this case only to city and intercity buses. Until the entry into force of the national Regulation on the awarding of public contracts, public buyers in

Germany were not required to take offers from foreign suppliers into account in awarding contracts. Since then, a growing number of public buyers have bought limited numbers of foreign buses. This trend was confirmed at the hearing by the Verband der Öffentlichen Verkehrsunternehmen (Association of Public Transport Companies) (VDV) and examples were cited (see recital 97). This suggests that the public procurement Directive will start to have an impact in the foreseeable future. Although the statutory conditions for a future shift towards a procurement procedure that is open to all suppliers are thus created, it must be assumed for the time being, on the basis of existing preferences for German suppliers and the still low level of imports, particularly in intercity buses, that there is still a separate German market rather than a wider market.

Austria

(39) The merger will have a smaller impact on the bus sector in Austria than in Germany. The combined market share of the new entity in city buses would not exceed 11 %. In intercity buses, Mercedes-Benz is not present at all in Austria, while Kässbohrer has a share of some 12 %. In the touring coach market, the combined market share would, however, be comparable to that in Germany (60 %). A number of factors indicate that Austria should not be regarded as a separate geographic market from Germany as far as touring coaches are concerned. Imports of buses from Germany are high, and the sales and service networks of bus manufacturers are comparable to the German service networks. As regards the equipment of buses, the demands of Austrian customers do not differ significantly from those of German customers. However, the question of whether Germany and Austria are for the abovementioned reasons to be regarded as a single market can be left open. The competitive assessment of the merger, which is confined below to the German market, would not be any different if the relevant geographic market were Germany *and* Austria (see point C).

Conclusion concerning the geographic market

(40) The relevant geographic market for city buses must be confined to Germany because of the low level of imports and the purchasing behaviour hitherto of the public operators of city buses. The intercity bus and touring coach markets are more open in an EEA context. However, these markets are characterized by a number of barriers to entry, some of which are to be regarded as significant, others as less significant for foreign suppliers. Customer-supplier relationships and brand loyalty in particular are to be regarded as being important up to the present time in both segments. On the one hand, these factors will slow down the opening up of the German market; on the other, there is already at present a clearly perceptible shift on the part of German customers towards non-German producers, as the increase in imports indicates.

(41) The Commission takes the overall view that conditions of competition are still different in Germany to those in the other EEA countries. There are, it is true, signs that the markets are becoming more international, particularly as regards touring coaches. However, as this change will take some time and as the German market is at present still national in character, it appears appropriate, in looking in overall terms at the present tangible and intangible barriers to entry, to base the competitive assessment of the proposed merger on the German market and to evaluate the effects of the opening-up of the German market in examining the effects of the merger (see point C).

C. COMPETITION ASSESSMENT

(42) Against the background of the abovementioned differences between city buses, intercity buses and touring coaches in objective terms and the particular conditions of competition that have hitherto existed in Germany, the competition assessment has to be based initially on these three sectors in Germany. However, since the three relevant product markets are adjacent, the competitive interactions and overlaps between the reference markets have to be taken into account when carrying out a competitive analysis. On the different bus markets, the competitive strength of a bus manufacturer can be assessed accurately only if the position of the producer in the total market is simultaneously taken into account.

I. The European bus market

(43) In 1993, the total number of buses sold within the EEA was some 19 250 (approximately 6 900 in Germany, 3 400 in France, 2 200 in the United Kingdom, 1 300 in Italy and Spain, and less than 650 in the other countries). This is in line with the European *market volume* for buses, which has been relatively constant for the past 10 years. The largest segment is city buses (1993: 41 %), followed by touring coaches (35 %) and intercity buses (24 %); as already mentioned, intercity buses have a larger share in some Member States, for example Germany, where they account for 33 %. In 1994, the number of buses sold in Germany declined, as mentioned above, by 18 %

to approximately 5 700 buses. In terms of volume, market growth over the next few years will probably, in contrast to the previous two years, show a further, albeit only slight, decline. This is partly due to the atypically large increase in demand in Germany over the last three years, because many East German bus operators renewed their bus fleets in the wake of German unification. In the longer term, it can be expected that demand will stabilize, though also showing no significant growth, a view confirmed by the bus manufacturers consulted by the Commission.

(44) However, market growth in the bus sector is reflected not only in terms of volume. Since buses are complex capital goods which from a technical point of view and in terms of equipment are undergoing constant development, the market displays not inconsiderable dynamism even when volumes remain constant. Increasing safety and environmenal requirements play a particular role in this connection. The importance of *competition in terms of quality* is all the greater as the industry is characterized by some overcapacity. Capacity figures are difficult to estimate, but according to the Commission's information, *overcapacity* amounts to between 20 and 25 % and indeed more in individual instances. Production is quite flexible, because in-house production is limited, i.e. a large proportion of standardized components are sourced from outside. Capacity in the construction of superstructures and equipment installation depends primarily on the number of employees. Finally, the markets are transparent in terms of volumes, since registration figures are publicly available. In addition, there is a high degree of price transparency regarding buses of particular types and equipment in relationships between customers within one and the same country.

(45) *Non-integrated* (or independent) producers such as Van Hool, Neoplan, Kässbohrer and Bova build complete buses, but purchase some components, notably engines, from integrated producers. *Integrated* producers such as Mercedes-Benz, Volvo, Renault, Iveco (Fiat), MAN and DAF are at the same time truck producers and make all or at any rate the key components in-house. Finally, the sector is also characterized by the presence of smaller producers, who act only as *body builders* and rely on the integrated producers for all the mechanical parts such as chassis, engines, gearboxes etc. The body builders cannot be considered immediate competitors to the integrated producers, since they are dependent on them for the principal components and the buses are afterwards driven under the brand of the chassis supplier.

(46) The merger between Mercedes-Benz and Kässbohrer can be seen as a further step in a *general restructuring* currently taking place in the European bus industry. Big truck and bus manufacturers are taking over smaller suppliers operating as non-integrated manufacturers or body builders. Volvo thus acquired Drögmöller in Germany, Steyr in Austria and Aabenraa in Denmark. Scania bought the Danish bus manufacturer DAB-Silkeborg. As early as 1991, Renault took over the French manufacturer Heuliez. Volvo and Scania have in this way considerably increased their ability to offer complete buses from a single source. This restructuring process can contribute to the rationalization of the European bus industry.

(47) Within the EEA, Germany is in terms of sales volume by far the largest market. A total of 36 % of all buses are sold in Germany. This market is thus, both quantitatively and in terms of price levels, as most of the suppliers confirm, an attractive market. Undertakings such as Volvo and Renault have accordingly confirmed to the Commission that they have a particular strategic interest in increasing their presence on the German market.

(48) On the basis of their combined market shares in 1994, Mercedes-Benz and Kässbohrer will together, within the European Economic Area (EEA), have a share of 27,9 % of the market for buses with a weight of eight or more tonnes. Volvo is the next largest supplier with 16,4 %, gaining 3,6 % compared to the previous year, while Mercedes-Benz and Kässbohrer have together lost 2,4 %. Renault and MAN have 10 to 11 %, and they are followed by a group each having 5 to 6 % (Neoplan, Iveco and Scania). As a result of the merger, Mercedes-Benz and Kässbohrer will strengthen their position not only in Germany, but also in other EEA countries. However, the main impact of the merger is in Germany, where Kässbohrer achieves 66 % of its turnover (14 % in France, 6 % in Austria, etc.). In Germany, however, despite the narrowing of the supply-side structure, the number of major domestic producers will still be larger than in other countries such as France, the United Kingdom or Italy.

II. The competitive structure of the German bus market

(49) *Germany* is an example of a market which has been shaped so far by the presence of several integrated and non-integrated producers. This

market is characterized by *strong competition* among the German suppliers. This is evidenced by the marked fluctuations in market shares over the past 10 years. In the total bus market in Germany, the market share of Mercedes-Benz, which had been at a level of 50 % in 1981, saw an increase from 42 % in 1984 to 47 % in 1985 and a decrease to 35 % in 1993. In 1994, Mercedes-Benz again achieved an increase to 37 %. Kässbohrer, after an increase to 28 % in 1989, saw a decline to 20 % in 1994. The market share of MAN, which had been as high as 30 % in 1980, increased from 17 % in 1985 to 24 % in 1993, but declined again to 22 % in 1994. Neoplan, which until 1983 was well under 10 %, saw a steady increase from 10 % in 1985 to 15 % in 1994. Similar changes in market shares can also be seen within the three segments. The market share of Mercedes-Benz in city buses declined from 59 % in 1986 to 43 % in 1993, in intercity buses from 44 % in 1985 to 31 % in 1993, and in touring coaches from 44 % in 1985 to 27 % in 1993 followed by an increase to 31 % in 1994 (see in detail the graphs showing market shares in Annexes Ia to Id).

(50) Although Germany is a relatively high-price market because of the high demands of customers concerning the quality of components and equipment, the price level is nevertheless the result of a competitively controlled price/performance ratio. As the Commission's investigations showed, suppliers in Germany do not have any significant price leeway. While the German suppliers were able to raise their prices considerably in the context of the surge in demand in 1991 due to German unification, they had to accept price decreases once again in the two following years. In the touring coach segment, for example, since 1992 Mercedes-Benz and Kässbohrer as the leading suppliers were not able to achieve prices that covered their costs.

(51) The manufacturers are facing price-conscious buyers in the bus market segments, particularly among private bus operators. The price sensitivity amongst buyers was consistently rated at a high level on a scale from 1 to 5 by the suppliers surveyed by the Commission (MAN, Ernst Auwärter: 5; Ikarus, Bova: 4; likewise, though without specifying any figure: DAF). As the Commission's investigation into purchasing behaviour over the last five years showed, customers are quite prepared to switch suppliers (see recital 63). Price consciousness on the demand side is also reflected in the increasing production of cheap, multipurpose bus types.

(52) Key competition parameters apart from price are, in particular, quality, flexibility in taking account of customers' wishes, the provision of good advice to customers and reliable service. Because of their strength in these areas, non-integrated producers like Kässbohrer and Neoplan have hitherto been competitive. At the same time, these high demands of German customers, the overcapacities in the industry and increased costs have led to a worsening of the profitability situation of the bus industry in Germany. Integrated manufacturers, particularly if they are strong in resources, can survive this situation more easily than non-integrated suppliers, as Kässbohrer's problems show.

III. The effects of the merger on the bus sector in Germany

(53) The competitive structure of the German market and the performance of the German bus industry have contributed in the past to the fact that, despite relatively easily surmountable tangible entry barriers, there have been relatively low imports into Germany. Since the basic competition has hitherto ensured a price/performance ratio that meets the demands of German customers, they have had no reason to switch to foreign suppliers to any large extent. The importance of intangible barriers like brand loyalty and customer-supplier relationships should also be seen in this light; as explained above, these factors contribute to the fact that Germany must for the time being still be defined as a separate geographic market. If, because of the increased level of concentration following the proposed merger, the currently price/performance ratio of German suppliers were to deteriorate to any significant extent, it must be supposed that these intangible market entry barriers would quickly lose importance. At least, if the customers behave in a commercially reasonable manner, it is to be expected that they would switch to foreign suppliers to a significant extent if the price/performance ratio were to deteriorate. The expectation of such commercially reasonable behaviour is justified in the present case, particularly in view of the high cost and competitive pressures on the German bus operators. Therefore, it is of special importance in this case that the room for manoeuvre of Mercedes-Benz/Kässbohrer is restricted by the potential competition of foreign suppliers as well as by the constraints imposed by actual competition from German suppliers. As explained below, this potential competition combined with the already existing actual competition is sufficient to guarantee effective competition on the German market even after the merger, because the tangible entry barriers can easily be overcome and the intangible barriers are expected to lose importance.

1. *Market characteristics and demand structure*

(54) The market shares cited below were calculated on a unit-count basis. They derive mainly from official registration figures. According to the parties, this calculation is normal in the industry, and market shares on a value basis are difficult to calculate reliably. The data available to the Commission show that market share estimates based on value in the three markets would to some extent lead to slightly higher figures for Mercedes-Benz and MAN.

(55) According to the parties, demand for *city buses* within the EEA amounts to some 8 000 buses a year. Germany was by far the biggest market within the EEA in 1993, with 2 750 vehicles. Mercedes-Benz and Kässbohrer together accounted for some 22 % of the city buses sold within the EEA, with Kässbohrer selling only very few city buses outside Germany and France (market share of Kässbohrer within the EEA: approximately 3 %). On the German market for city buses, the demand side is characterized by an estimated 250 large to very large municipal bus companies. In addition, a large number of private bus operators having their own concessions are present in this market.

(56) In the case of *intercity buses*, the market volume within the EEA over the last two years was just under 5 000 buses. Germany is once again the biggest single market. At the moment, some 14 000 intercity buses are registered in Germany. According to the parties, approximately 2 000 intercity buses were sold in Germany in 1993. France is the next largest market with a volume of around 800 intercity buses sold in 1993.

(57) The buyers of intercity buses include both public and private companies. In Germany, the 17 regional bus companies of Deutsche Bahn AG are the largest operators of intercity-bus scheduled services. These regional bus companies have on average fleets of 350 buses, partly rented from private companies, and together they account for an estimated 15 % each year of the number of intercity buses bought in Germany. Another important part of the public buyers are the municipal and local authorities. They usually operate the scheduled services within large conurbations. In addition, a significant proportion of the some 6 000 private German bus operators are also active in intercity scheduled-service transport. According to the information provided by the Bundesverband Deutscher Omnibus-unternehmer eV (BDO), such private bus operators have on average eight buses, and most of them are small and medium-sized enterprises. Only about 5 % of the private German bus operators have a fleet of more than 50 buses, and 20 % of them have only one or two buses.

(58) The market for *touring coaches* has similarities with the market for intercity buses, but there are also a number of fundamental differences. The touring coach market is a heterogeneous and highly segmented market with a wide range of products. Since almost all the operators here are private bus operators (travel agencies etc.), demand structure is also different. The competitive effects deriving from competition amongst private bus operators and with other means of transport are examined in greater detail below (see recital 84). Overall, the touring coach market in Germany is more dynamic than the intercity bus market. The market entry barriers which have hitherto existed there are accordingly less important, as explained below.

2. *The position of the new entity*

(59) (a) In the case of *city buses*, the two companies had in 1993 a combined market share in Germany of 44,5 % (Mercedes-Benz 42,9 %, Kässbohrer 1,6 %). The next largest competitor in Germany was MAN with a market share of about 44 %, while the market share of Neoplan was approximately 8 %. Foreign suppliers accounted for a total of 3,5 % in 1993 (see the table in Annex II).

(60) The addition of market shares resulting from the merger will not therefore mean any significant increase for Mercedes-Benz. In qualitative terms, the importance of the overlap in the city bus activities of the two companies appears to be even more limited, since Kässbohrer does not supply any low-floor buses in the strict sense. Furthermore, it has recently been evident that the position of foreign competitors in Germany has strengthened. Although Renault and Volvo, the main foreign manufacturers, have so far had a fairly small market share, they have recently been successful in a number of tenders in Germany. Because of the only slight increase in market shares of Mercedes-Benz/Kässbohrer and the fact that its market share will be only marginally stronger than that of MAN, it must be assumed that on the German city bus market there will not be any creation of strengthening of a dominant position as a result of the merger.

(61) (b) In the *intercity bus* market, the combined post-merger market share of Mercedes-Benz and Kässbohrer within the EEA will amount to 41 %. This figure is primarily a reflection of

the high market shares of the two companies in Germany. In Germany, Mercedes-Benz had 34,6 % and Kässbohrer 39,1 %, i.e. a total of 73,7 %, of the market for intercity buses in 1993. MAN had 17,7 % here and Neoplan 6,5 % (see the table in Annex II). Only limited market share additions will take place in other important intercity bus markets like France and Italy (France, 11 % in 1993, of which Kässbohrer 7 % and Mercedes-Benz 4 %; Italy, 11 %, of which Kässbohrer 1 % and Mercedes-Benz 10 %).

(62) (c) The position of the merging companies Mercedes-Benz and Kässbohrer on the German *touring-coach market* will be less strong than on the intercity bus market. On the basis of a market volume of 2 188 buses sold in Germany in 1993, Mercedes-Benz and Kässbohrer would after the merger have a combined market share of 54 %. The next largest competitor is Neoplan with 27,8 %. MAN had 4,3 % on this market in 1993, but increased this to 7 % following the introduction of a new model. The market shares of foreign manufacturers amount to 10,3 % (see table in Annex II). The difference in market shares between the parties and their competitors, particularly Neoplan, is thus much smaller than in the case of intercity buses. In Austria, Mercedes-Benz and Kässbohrer have a combined market share of 60 %, and in a market comprising both Germany and Austria, their market share would be 55 %; the remaining market shares in Austria are divided between Volvo (including Steyr), MAN and Neoplan.

(63) (d) As a result of the merger, Mercedes-Benz and Kässbohrer will unquestionably achieve high combined market shares in Germany on the markets for intercity buses and touring coaches. In 1993, they accounted for a total of 1 473 of the 2 000 intercity buses sold in Germany and a total of 1 236 of the 2 188 touring coaches sold there. However, account must be taken here of the fact that, as is also assumed by competitors, this market share will be subject to a *shrinkage effect*. Such shrinkage is to be expected particularly as a result of the '*multiple sourcing*' strategy pursued by many German buyers. The parties have produced figures showing that more than 80 % of all German bus operators have at least two different makes in their fleets. The survey conducted by the Commission itself indicated that approximately 60 % of bus operators have buses of more than one make; however, one of the preconditions applied in calculating this figure was that the relevant bus operators should have at least two buses of the second make (having only one bus of a second make would not amount to a multiple sourcing strategy). Although there are instances of individual bus operators with more than 60 buses having only one make of bus, the Commission's investigations have shown that the great majority of larger bus companies (having eight to 10 buses or more) have at least two makes of bus in their fleets and thus clearly pursue a multiple sourcing strategy. This applies in particular to public undertakings with relatively large fleets of buses. A shrinkage effect is thus to be anticipated to a particular extent in the case of intercity buses. Small operators purchasing new buses at relatively less frequent intervals are the only ones who do not have any occasion to pursue a deliberate multiple sourcing strategy. However, such operators also use a potential switch to another supplier as a 'threat' against their current supplier in order to obtain price concessions.

(64) The shrinkage effect can be partially counteracted by Mercedes-Benz/Kässbohrer's planned retention of the two different brands. As the parties argued at the hearing, the customer groups overlap considerably, contrary to the Commission's original assumption: [. . .] [1] % of all bus operators operate both Mercedes-Benz buses and also 'Setra' buses manufactured by Kässbohrer. Some of these operators will switch to other suppliers following the merger, so as to avoid becoming dependent. Furthermore, Mercedes-Benz and Kässbohrer are, because of their brand image and their bus models, similarly positioned, as the parties have pointed out. Experience has shown that, precisely in such a situation, a merger produces significant shrinkage effects. Such an effect could, for example, be seen in the United Kingdom following the acquisition of British Leyland by Volvo.

(65) High market shares do not in themselves justify the assumption of a dominant position. At any rate, they do not allow a dominant position to be assumed if other structural factors are detectable which, in the foreseeable future, may alter the conditions of competition and justify a more relative view of the significance of the market share of the merged companies (see the precedents of the Commission Decisions in Alcatel/Telettra, Decision of 12 April 1991, IV/M.042 [2], and Mannesmann/Hoesch, Decision of 12 November 1992, IV/M.222 [3]). Such

[1] More than 50 %.
[2] OJ No L 122, 17. 5. 1991, p. 48, point 38.
[3] OJ No L 114, 8. 5. 1993, p. 34, point 91.

structural factors could, for example, be the ability of actual competitors to constrain the action of the new entity, the expectation of a significant increase in potential competition from powerful competitors, the possibility of a quick market entry or the buying power of important customers. In the present case, the market shares of the merged companies are relativized by the fact that it may be expected that there will be substantial actual and in particular potential competition, as explained in the following sections.

(66) (e) The proposed merger would allow Mercedes-Benz and Kässbohrer to achieve certain *synergy effects*. This applies in particular to research and development, production and administration. Kässbohrer will in future benefit from the size of Mercedes-Benz in joint purchasing. The further advantage of component standardization is limited, since Mercedes-Benz and Kässbohrer already to a large extent use common components. Furthermore, it is not possible to apply further standardization in customer-sensitive and labour-intensive areas like design and equipment. The parties point out that the variety of types is often greatest in the case of smaller manufacturers such as Van Hool or Neoplan. In sales and service too, the merged companies will achieve only limited synergies (in logistics), since they will pursue a two-brand strategy in the market, and this presupposes separate sales and service. Lastly, competitors have questioned whether the expected synergy effects are enough to offset the existing cost disadvantages of Mercedes-Benz in comparison to its competitors. According to the information given by the parties at the hearing, such cost disadvantages are substantial: they amount per bus to between DM [...] (=[...]%) compared with Neoplan and DM [...] (=[...]%) compared with Ikarus.

(67) In the *touring coach market*, Mercedes-Benz will achieve an advantage through the acquisition of Kässbohrer in that Kässbohrer has a good brand image here, while Mercedes-Benz has a comparatively weaker position in this area. According to Mercedes-Benz's own data, the merger will lead to an extension in its product range, particularly as regards double-decker and triple-axle buses. Kässbohrer also has production flexibility and a recognized potential in the development of new bus types. However, in view of the variety of types and equipment in touring coaches, as explained above, the importance of the synergy effects achieved through the merger will be only limited.

(68) In addition to the potential effects of the merger, the *size* of the new entity Mercedes-Benz/Kässbohrer has to be considered. Mercedes-Benz is the leading European bus producer in the world market. According to the press, in 1992 it produced 30 000 buses worldwide, whereas Volvo, the second largest producer, produced less than 6 000. Just under 19 000 Mercedes-Benz buses are produced in Brazil, though 90% of these are only in chassis form. These buses are being sold exclusively in South America. The fact remains, however, that through Mercedes-Benz the new entity would have a worldwide sales network which would facilitate trade in second-hand buses. This, plus the fact that Mercedes-Benz is also the largest truck manufacturer in Germany and the EEA, coupled with the financial strength of the Daimler-Benz Group, would stand the new entity in good stead. For many years Mercedes-Benz was able to finance its loss-making bus business out of the profits earned from its other activities. The total amount of DM 3,2 billion over 20 years mentioned by a competitor has, however, simply been deduced from the notional operating result, which can be explained by Mercedes-Benz's balance-sheet policy, and is disputed by Mercedes-Benz.

3. *Contestability of the position of Mercedes-Benz/Kässbohrer*

(a) Actual competition

(69) In Germany, MAN and Neoplan are actual competitors whose shares of the total bus market come to 24% and 14% respectively. As already indicated, in the intercity bus sector MAN has 17,7% and Neoplan 6,5%, while in the touring coach sector Neoplan is stronger with 27,8% compared with MAN's 4,3%.

(70) *MAN* is a German producer of machinery and commercial vehicles, with annual sales of about ECU 10 billion (1992/93), of which about ECU 4 billion is earned in Germany. Its motor vehicle sales are worth about ECU 3,6 billion, of which about ECU 500 million comes from buses. MAN is the only competitor which operates as an integrated manufacturer and hence independently from engine suppliers. It should be able to cash in on its strong position in the city bus market. In 1993 it launched a new touring coach onto the market.

(71) *Neoplan* is a relatively small, family-owned bus manufacturer with sales of ECU 390 million in

1993. It is non-integrated, i.e. it buys components from integrated manufacturers like Mercedes-Benz. The company is particularly flexible and produces at relatively low cost. Compared with Kässbohrer, Neoplan has a low in-firm production ratio, and it has much lower employment costs than Mercedes-Benz and Kässbohrer. These strengths are a particular advantage when competing with the major manufacturers in the touring coach market. In this market, as a competitor said, 'every bus is tailor-made'. This is less true in the intercity bus market, where Neoplan is much less important as a competitor than MAN.

(72) Both MAN and Neoplan can be expected to profit from the fact that the purchasers of intercity buses and touring coaches with fleets of more than about 10 buses operate vehicles made by different suppliers. Both companies therefore expect to benefit from the reduced market share of Mercedes-Benz/Kässbohrer.

(73) Several *foreign competitors* have already entered the German market, and in particular the touring coach segment. This is especially true of Bova. This Dutch bus producer was able in each of the past three years to sell more than 100 buses, or about one-third of its annual production, in Germany. This export success was achieved with seven or eight salesmen. Although it is a relatively small firm, Bova has therefore set a precedent for cross-border market entry. Drögmöller, a small German producer of touring coaches at the top end of the market, was recently acquired by Volvo, as was the Austrian producer Steyr. Volvo has thus now entered the German market as a supplier of complete buses, whereas in the past it supplied only chassis to Germany.

(74) In *Austria,* besides MAN and Neoplan, Volvo entered the market by acquiring the domestic manufacturer Steyr. Steyr concentrates on the scheduled-service bus market, and Volvo has already begun to offer Steyr's intercity buses for sale on the German market.

(b) Vertical relationships

(75) The Commission's investigation has revealed that the vast majority of German bus operators prefer German engines. Mercedes-Benz and MAN use their own engines, whereas Kässbohrer and Neoplan, as non-integrated producers, obtain most of their engines from Mercedes-Benz. In 1993 Kässbohrer thus obtained 2 090 engines from Mercedes-Benz (out of total sales of 2 348 buses in the EEA). An attempt by Kässbohrer to sell buses with Scania engines was not a success, according to the company. Neoplan uses Mercedes-Benz engines for some 80 % of its requirements, the remainder being met by MAN and KHD Deutz (3 %). The company experienced difficulties on several occasions in the past — e.g. in the 1980s with engines for city buses — with the supply of engines from Mercedes-Benz, [. . .] [1].

(76) From a technical standpoint there is no evidence that foreign engines are inferior. This is borne out by the success of foreign truck suppliers (Volvo, Scania) in Germany. The preference for engines of German origin is often based on individual attitudes and on factors such as trust and experience. It used to be especially strong among private customers, especially coach operators. In response to a survey carried out by the Commission, such operators gave German engines an average mark of 3,9 on a scale of one to five. Non-integrated foreign bus manufacturers are free, however, to use Mercedes-Benz, MAN or KHD Deutz engines in the vehicles they supply both to private and to public operators. And the Bova example shows that foreign manufacturers can also succeed without German engines if they have the right product. Bova equips its buses for the German market with DAF engines and its buses for the French market with Mercedes-Benz engines.

(77) *Integrated* foreign bus manufacturers such as Volvo, Renault or Iveco are in a position to offer customers a complete bus, if necessary at a price which is attractive to the price-conscious bus operator (see recitals 83 *et seq.*). Competitors such as Volvo consider the quality of their engines to be at least as high as that of Mercedes-Benz engines and with good reason point to the vehicle servicing network they place at the disposal of operators who purchase their buses. The success of companies like Renault and Volvo in tendering for contracts with public transport undertakings (see below) shows, moreover, that foreign engines are acceptable to public operators.

[1] Recently, however, an agreement has been concluded on future supplies (details of which are a business secret).

(78) In the course of the proceedings Mercedes-Benz stated in writing that it is prepared to supply European bus manufacturers who do not produce their own engines ('non-integrated' manufacturers) and who are not part of an engine-manufacturing group with Mercedes-Benz engines for buses which are to be sold in the EEA. The conditions of supply will, compared with the supplying of its own bus market, be non-discriminatory, particularly as regards prices, discounts, delivery periods, warranties and maintenance (see the text of the statement in Annex V).

(c) Potential competition

(79) The potential competition from foreign bus suppliers on the German market is of decisive importance if there is to be sufficient competitive control of the freedom of manoeuvre of Mercedes-Benz after the merger. This potential competition embraces both an expected increase in current imports into the German market, and hence a strengthening of the market position of those foreign suppliers who are already present in the German market, and imports from suppliers who will enter the market. The potential competition from foreign suppliers may also restrict the freedom of manoeuvre of the new entity in that foreign suppliers will increasingly make competing offers to would-be bus buyers, even if in individual cases they are not taken up. The importance of the potential competition therefore has to be determined not only from the number of actual imports, but also from the extent to which foreign suppliers actively canvass would-be buyers in Germany (see recital 96 *et seq.* for further details).

(80) In terms of market size Germany is by far the most important bus market in western Europe. The Commission has established that major foreign competitors have a strategic interest in entering that market. The small number of imports into the German market in the past was due not only to the abovementioned intangible barriers to market entry, but also to the fact that foreign suppliers' products were not properly tailored to the German market. For example, low-floor buses, which were first developed in Germany, represented a clear technical advance on the part of German bus manufacturers. In the intercity bus and touring coach markets, suppliers such as Volvo who were primarily chassis manufacturers experienced difficulties because, unlike in Scandinavia or Spain, the German market insists in the main on being supplied with complete buses. The problem of foreign suppliers' lack of a product range suited to the German market has, however, now been largely overcome. Both the BDO, which represents private bus operators, and the VDV, which represents public transport undertakings, have confirmed that foreign buses are nowadays competitive on the German market. According to the VDV, this will also hold true shortly for low-floor buses. The share of the German bus market accounted for by imports has increased steadily as a result since 1989. Although, at 5,6 %, this market share was still relatively small in 1994, it must be borne in mind that the present level has been reached within the space of a few years.

(81) There are a number of fundamental factors which justify the expectation that, following the initial successes already achieved, competition from foreign suppliers in the German market will increase considerably in the years ahead. In addition to the abovementioned importance of the German market, a major factor in the city and intercity bus markets is the public procurement Directive, which was transposed into German law in 1994 and which has already led to a change in the conditions of competition (see below). Then there is the cost pressure on public transport undertakings stemming from the stretched state of local authorities' finances and the reduction in subsidies for public suburban transport. In the touring coach market, the essential factors are the competitive pressure on private bus companies, which is leading to lower fares, and changing purchasing behaviour whereby less and less importance is being attached to customer-supplier relationships and brand loyalty. When asked how they would react to a price increase of 5 to 10 % by their traditional supplier, most of the bus operators surveyed by the Commission replied that they would consider changing suppliers. Although it is of only limited value in market research terms, this reply was expressly underlined at the hearing by the VDV and the BDO. Taken as a whole, these factors point to all segments of the German bus market being gradually opened up to foreign competition in the foreseeable future.

(aa) Barriers to market entry

— Customer-supplier relationships

(82) Customer-supplier relationships tend to be of a long-term and personal nature. The need to build up such relationships is currently the greatest

barrier to entry to the German bus market. A potential supplier must overcome this barrier by investing time and money in canvassing customers. One bus supplier described the bus business as 'a relationship business'.

(83) Unlike in the consumer goods sphere, where purchasers tend to show less price sensitivity (see, for example, Procter & Gamble/VP Schickendanz (II), Commission Decision of 21 June 1994, IV/M.430 [1], and Nestlé/Perrier, Decision of 22 July 1992, IV/M.190 [2], purchasers of industrial capital goods normally base their purchase decision on a cost-benefit analysis. It may well be that, in some instances, industrial would-be purchasers do not base their purchasing decision solely on price [3] and other rational factors. That is not the case here, however.

(84) Buses are capital goods and represent a major cost factor for bus operators. Operating costs including depreciation, but excluding driver-related employment costs, account as a rule for more than 25 % of the operator's total operating costs. Private intercity bus operators have to compete with other bus operators for routes. Both private and public intercity bus operators may in the past have been less price sensitive than pure touring coach operators because, in Germany, scheduled bus services are subsidized by the Government [4]. This factor will, however, become less important in future as at the end of 1996 grants under the Local Authority Transport Finance Law are to be reduced by 50 %. Public bus operators work under cost pressures and budgetary contraints. According to press reports, the cost of employing a driver in the public sector in, say, North Rhine-Westphalia is 70 % higher than in the private sector. Public operators are therefore anxious to privatize parts of their undertakings or to 'flag out' individual routes.

(85) The decreasing passenger figures compared with the railways, airlines or private motor cars have lead to a further worsening of the economic position of the bus industry. In 1994 the number of coach trips fell by 16,5 %; this bears out a development whereby, according to the BDO, the growth of the tourism sector in Germany has basically 'by-passed the bus'. As the BDO stated at the hearing of interested parties, this has already led in the bus industry both to a fall in prices in many segments of the coach tour market and to overcapacity, and has caused increased price competition between bus operators which means having to make savings in the equipment sphere. There are signs that operators' equipment requirements are already becoming less stringent and that foreign buses, which are simpler but still adequately equipped, are enjoying improved market prospects. Whereas according to the operators surveyed purchase price used to be only one procurement criterion among many and market access using a low-price strategy enjoyed only limited success, price will play a more prominent role in future. This should favour a company like Neoplan, which currently supplies cheaper buses than Kässbohrer, as well as other smaller, flexible manufacturers, e.g. from Belgium and the Netherlands (Bova, Den Oudsten, Van Hool). The Commission's enquiries have revealed that foreign buses are being bought in increasing numbers on account of their lower purchase price.

— Brand loyalty

(86) This market tendency will have a similar impact on the brand loyalty shown so far by bus operators. There used to be considerable brand loyalty on the part of private, small-to-medium-sized bus operators, and to some extent on the part of public transport undertakings. It should, however, be borne in mind in this context that, as stated above, from a fleet size of about 10 buses, bus operators mostly have two brands in their fleet. There are no doubts that at least from a fleet size of 50 buses, bus operators follow a clear strategy of multiple sourcing. The advantage of not being dependent on one supplier is, from this fleet-size on, considered more important by customers than the advantages of having a homogeneous fleet with respect to service and spare parts. As stated above (see recital 57), the 17 regional bus companies of Deutsche Bahn AG have an average fleet size of 350 buses. Bus companies of municipalities, which are partly organized in transport associations, often achieve a comparable size. But also in the private area, fleets of more than 50 buses play a significant role. While only 5 % of all the private bus operators belong to this category (302 companies), they have more than 40 % of the total private bus fleet. The existence of a

[1] OJ No L 354, 31. 12. 1994, p. 32.
[2] OJ No L 356, 5. 12. 1992, p. 1.
[3] Price is meant here in the sense of price/performance ratio, since not only the purchase price but also the cost of spare parts, economy in use, depreciation, etc. are important factors in the case of capital goods such as buses.
[4] In Germany both public and private bus operators are eligible under the Local Authority Transport Finance Law for a grant worth about 30 % of the purchase price provided the new bus is used for more than two-thirds of the time on a scheduled service over a period of at least 10 years (the exact percentage differs from one *Land* to another) and certain standards of equipment (handrails, double doors, route indicator panels) are met.

multiple sourcing strategy for a considerable part of the demand relativizes the importance of brand loyalty as a market entry barrier. This is particularly true after the Mercedes-Benz/Kässbohrer merger, since, as stated above (recital 63), customers of the previously separated companies who follow a multiple sourcing strategy will probably to a significant extent change supplier. Strong preferences for national brands, as the Commission stated in the Renault/Volvo Decision (loc.cit., recital 17) four years ago, are beginning to weaken noticeably, as can be seen from the Commission's surveys into purchasing behaviour and attitudes towards foreign buses in Germany. The BDO pointed out that the purchase behaviour of private bus operators is based less and less on personal relationships and more on business considerations such as price and economy in operation. This tendency can be expected to become more marked as a result of increased competition between operators.

(87) Brand loyalty is also becoming weaker inasmuch as the fleet policy of private bus operators is increasingly being determined by short service lives and the need for regular adaptation of the fleet to take account of the equipment level demanded by the market.

— Sales and service network

(88) A functioning distribution and servicing network is vital to any bus manufacturer. The German manufacturers, particularly Mercedes-Benz, Kässbohrer and MAN, have relatively dense networks. In the case of Mercedes-Benz servicing of buses takes place in the workshops for trucks and other commercial vehicles, whereas in the case of Kässbohrer servicing and repairs are carried out via 84 contracted garages. Kässbohrer has six sales points of its own and 26 sales representatives. MAN provides servicing through 160 workshops of its own and 210 contracted garages. A *non-integrated* bus manufacturer wishing to enter the market must either bear the cost of a network for an initial period in which it will not be fully utilized, or use the network of another vehicle manufacturer. The Commission has established, however, that distribution and servicing costs are not an insurmountable barrier to entry by foreign bus suppliers. Foreign manufacturers estimate the cost of setting up a servicing centre at between DM 30 000 and DM 100 000. On the basis of the 80 centres which suppliers estimate are needed to cover the whole German market, this gives a total cost of approximately DM 5 million. But a supplier need only maintain a few workshops of its own, and can otherwise work with contracted garages without incurring any special costs. An example of this method is provided by Bova, which handles distribution in Germany through seven sales representatives, while its servicing is done by contracted garages, some of them DAF garages for trucks; Bova states that spare parts can be delivered anywhere in Germany within 24 hours. Part of Bova's German distribution operation is run in partnership with Den Oudsten.

(89) *Integrated* manufacturers such as Volvo, Scania, Renault and Iveco are in a position to have buses serviced at centres primarily intended for trucks. According to the parties Volvo has more than 133 such centres, Renault has over 188, and Iveco actually has more than 501. This applies especially in so far as buses and trucks have in common mechanical components that are subject to wear and tear, such as engines. Buses do also need specific services which require separate investment in the equipment of their service points and in staff training. But the expenditure involved is generally regarded as rather small, and would certainly be within the capability of the manufacturers just referred to. Customers of non-integrated manufacturers, such as van Hool, can turn to the service points of integrated manufacturers for mechanical components. As the example of Wuppertal shows, a bus manufacturer — in this case Ikarus — may also designate a large consumer — in this case the Wuppertaler Stadtwerke — as a contracted garage. The bulk of customers have their own workshops and carry out their own routine maintenance and small repairs; this is true even of bus operators with fleets of only eight to 10 buses.

(90) In the course of this proceeding Mercedes-Benz declared its preparedness to put an end to the exclusivity clauses of Kässbohrer's sales representatives and contracted garages. The latter can therefore carry on distribution and servicing for foreign bus manufacturers and their German subsidiaries (the statement is reproduced in full in Annex V).

— Switching costs

(91) For each make of bus it operates a bus company has to spend a certain amount of money on

training, tools, and stocks of spare parts. A purchaser of buses will usually seek to keep the number of makes he runs as low as possible. On the other hand the manufacturer will usually be prepared to bear part of the cost of switching in order to attract the customer to his make. A customer who changes supplier will consequently have to bear only part of the additional cost. These costs are not significant in comparison to the total cost of a bus, and do not deter even quite small operators, with fleet sizes of 10 buses and upwards, from running more than one make at the same time. Referring to a model calculation by the German consultancy firm Dekra, Mercedes-Benz estimates the cost of a switch at an average DM 25 000 to 30 000 (based on the purchase of five touring coaches at a cost of DM 2,2 million). This is only 0,4 % of the total life cycle cost of an average touring coach.

— Buy-back prices and conditions

(92) A purchaser buying a new bus will also consider the trade-in price he can expect for the old one. Competitors and some bus operators state that trade-in prices are 5 to 10 % higher if the original supplier buys back the old bus. But this is by no means always so. Many bus operators believe they can secure better prices if the old bus is traded in for a new bus of a competing make. There is also a large market in second-hand buses, and many bus operators prefer to sell their old buses themselves and to seek better terms for the purchase of new ones. Lastly, public bus companies run their vehicles very much longer than private operators do.

(93) The high second-hand prices for Mercedes-Benz and Kässbohrer vehicles do not constitute a barrier to entry to the German market by foreign suppliers offering lower prices. If they accept a Mercedes-Benz bus, for example, in part payment for a new bus, they make a smaller immediate gain; but this effect is offset when they sell the old bus on the second-hand market.

— Technical specifications and standards

(94) General recommendations for city and intercity buses are issued by the Association of German Transport Companies (Verband Deutscher Verkehrsunternehmen — 'VDV'); these recommendations are intended to serve as a guide to VDV members, and especially the smaller operators, for use in tendering procedures under the Public Procurement Directives. But the recommendations are also used by large operators such as Deutsche Bahn AG. They have produced a measure of standardization on the German city and intercity bus markets. It does not appear that these recommendations discriminate against foreign manufacturers as compared with German ones; rather, they include foreign manufacturers to adjust to the standardized models.

(bb) Public procurement

(95) In the past the purchasing policy of German public bus operators was governed by a procurement code known as the VOL (Verdingungsordnung für Leistungen — ausgenommen Bauleistungen) which merely required them to include German suppliers in their tendering procedures. The Community Directive on the procurement procedures to be followed by utilities, Council Directive 90/531/EEC, was transposed into German law with effect from 1 March 1994, and once they reach a certain size the contracts to be awarded by public bus operators or private concessionaires must now be put out to tender throughout the Community (see recital 37). This will very likely bring the bulk of city and intercity bus purchases within the scope of the Community-wide tendering requirements. This is a major step towards the opening-up of the German market in both segments, even though, as we have seen, the Public Procurement Directives have not been fully transposed into German law. Public purchasers' needs will now be clearer to foreign suppliers, and this will substantially improve their chances.

(96) There are no comprehensive statistics as yet, but the Commission has established that there is already evidence that the Utilities Directive has had an impact in the first year of its implementation in Germany. There was a considerable increase in the number of Community-wide tenders for buses in Germany as compared with previous years:

	1992	1993	1994
Number of Europe-wide tenders in Germany	4	48	161

The Commission's figures for participation by foreign suppliers in German tendering procedures which before 1994 mainly did not take place as European-wide tenders, are as follows:

	Year	Took part	Secured contract
Volvo	1992	15	3
	1993	25	7
	1994	30	9
Renault	1992	3	1
	1993	4	2
	1994	25	6
Van Hool	1992	9	2
	1993	16	1
	1994	63	5 (in 20 cases the procedure is not yet complete)
Ikarus	1992	5	1
	1993	7	3
	(no figures for 1994		

(97) These figures show that the participation of foreign supplies in public sector competitions increased substantially in 1994. The proportion of cases in which a tender submitted led to the award of a contract was sometimes considerable. The Commission has no complete data which would show how many buses these contracts involved. But from examples cited by the VDV it is clear that foreign suppliers secured quite substantial contracts (e.g. Renault, 23 buses in Dresden and more than 10 in Saarbrücken; Ikarus, 19 buses in Wuppertal; Van Hool, 10 buses in Duisburg; Den Oudsten, 40 buses in Frankfurt). The general point can be made here that competitive pressure is exerted on domestic suppliers not just by the award of a contract to a foreign supplier but by the mere existence of his tender. The parties claim that in the mean time there are foreign tenders submitted in 60 % of all cases of public procurement. On the basis of the figures set out above this estimate is not unrealistic.

(98) These figures set out above permit the conclusion that even in the first year of its application the Utilities Directive had a considerable impact. It can be supposed that the presence of foreign suppliers which is observable today will gradually grow in future. The German market is large, and foreign products are now available which are suited to the needs of the German market; but there is another factor which is stronger again, namely the pressure on the costs of operators providing a scheduled service. Local authorities are in a tight financial situation, and the grants available for the purchase of buses have fallen as a result of the reform of the financing of local authority transport, so that scheduled service operators will in future have to be more conscious of prices and will either have to take up offers by foreign suppliers or use offers of this kind to put pressure on domestic suppliers. At the hearing the VDV representatives cited the example of rapid transit systems, where by awarding more contracts to foreign suppliers the public transport operators had exerted powerful downward pressure on prices. In the case of rapid transit systems, unlike that of buses, there have for a long time been foreign products which are fully suited to the German market. The VDV was very strongly of the opinion that similar developments could be expected in the case of buses in the very near future, because fully competitive products were now available from foreign suppliers.

(d) Conclusion

(99) For these reasons it can be accepted that despite the addition of the shares of the parties in the intercity bus and touring coach segments, and their high share of the total bus market, the transaction will not lead to the creation of a dominant position. The merged undertaking's freedom of manoeuvre will be limited by the competition which already exists, the main competitors being domestic manufacturers who could well increase their present market shares at the expense of Mercedes-Benz because its combined share will inevitably undergo some shrinkage. Its freedom of manoeuvre will be restricted even further by the potential competition offered by foreign suppliers, who will in future be expanding their currently fairly limited positions, and who will provide a sufficient measure of competitive control especially with the gradual expansion of competitive rendering. Given the level of competition in private travel and the pressure of costs in scheduled services, German bus operators have no choice but to use foreign competition as a curb on the German market. This was not always possible in the past, but it is so now, as there are sufficient foreign products available which meet the requirements of the German market.

(100) It can accordingly be expected that the intangible barriers to entry which existed in the past and which arose out of the close customer-supplier relations and brand loyalty will lose their significance more and more rapidly. The tangible barriers to entry, such as the difficulty of establishing or extending a sales and service network, can be overcome if the entrant is

prepared to make an investment which given the size of the German market ought not to pose a major problem. This is so at the very least where a foreign supplier makes entry to the German market a strategic objective. But it is in fact a safe assumption on the basis of the Commission's inquiries. The gradual growth in competition from foreign suppliers which is to be expected will also be facilitated in city and intercity bus transport by the Directive on the procurement procedures of utilities, which has already had a considerable impact in Germany in the first year of its application. It must be concluded that the German market will open up to Community-wide competition in the near future. Together with the level of competition which already exists this offers a sufficient guarantee that after the merger Mercedes-Benz will not be in a position to act independently of its competitors and customers to any substantial extent.

D. OLIGOPOLISTIC DOMINANCE

(101) It might be assumed that the supply structure in Germany following the merger would lead to the creation or strengthening of an oligopoly of the leading supplier Mercedes-Benz/Kässbohrer and MAN in the city bus market and of these suppliers and Neoplan in the intercity bus and touring coach markets. The Commission takes the view that there is not at present sufficient evidence to warrant such an assumption.

(102) Mercedes-Benz and MAN will have a combined market share of 87,2 % in *city buses*. The question of whether there is already a duopolistic supply structure can be left open, as the merger with Kässbohrer would lead to an increment of only 1,6 % for Mercedes-Benz. This would have only an insignificant effect on the structure of the market, and is not enough to constitute the creation or strengthening of a duopoly. It should also be pointed out that Kässbohrer has never produced a city bus for the volume market which has the low floor needed to make it competitive.

(103) There has hitherto been intense competition on the German market in *intercity buses and touring coaches*, as described above. There is accordingly no reason to suspect oligopolistic dominance at present. The merger will lead to a strongly increased degree of concentration on both markets: in intercity buses, the three producers Mercedes-Benz/Kässbohrer, MAN and Neoplan will have nearly 98 % and in touring coaches nearly 90 %.

(104) However, there are no indications that the increase in the degree of concentration will result in an oligopolistic situation. The market position of the various competitors, their resources and their interests are all different, and their products are very heterogeneous. It can rather be expected that MAN and Neoplan will intensify their competitive efforts in the hope of securing further customers who might be tempted to look elsewhere after the merger. This holds despite the economic links between Neoplan and Mercedes-Benz. As has been explained above, the economic importance of the engine in the finished bus is limited. There are alternatives open to Neoplan, which already buys engines from several suppliers. There is also potential competition from foreign suppliers, both integrated and non-integrated, as we have seen, and this will sufficiently reduce the freedom of manoeuvre of the group of leading suppliers.

E. OVERALL ASSESSMENT

(105) The Commission's inquiries have lead to the conclusion that the merger will not give Mercedes-Benz and Kässbohrer a freedom of manoeuvre which escapes adequate competitive control. Neither will the merger lead to joint dominance of the relevant bus markets by the leading German suppliers.

(106) On the market in city buses the merger will strengthen the position of Mercedes-Benz and Kässbohrer only to an insignificant extent. On the markets in intercity buses and touring coaches Mercedes-Benz/Kässbohrer will have a large market share. Despite this market share, which in any event will not remain at the same level, the existing competition from German suppliers and especially the potential competition from foreign suppliers will ensure that Mercedes-Benz/-Kässbohrer will not be in a position to act independently of its competitors and customers to any substantial extent.

(107) There is no reason to expect that the merger will create or strengthen a dominant position outside Germany and Austria either.

V. CONCLUSION

(108) It can accordingly be accepted that the proposed transaction will not create or strengthen a dominant position as a result of which effective

competition would be significantly impeded in a substantial part of the common market. Pursuant to Article 2 (2) of the Merger Regulation and Article 57 of the EEA Agreement, therefore, the transaction should be declared compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration between Mercedes-Benz AG and Karl Kässbohrer Fahrzeugwerke GmbH is declared compatible with the common market and with the operation of the EEA Agreement.

Article 2

This Decision is addressed to:

Mercedes-Benz AG
D-70546 Stuttgart.

Done at Brussels, 14 February 1995.

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX Ia

COMPARISON OF MARKET SHARES IN GERMANY

1980 to 1994

(1994: January to November)

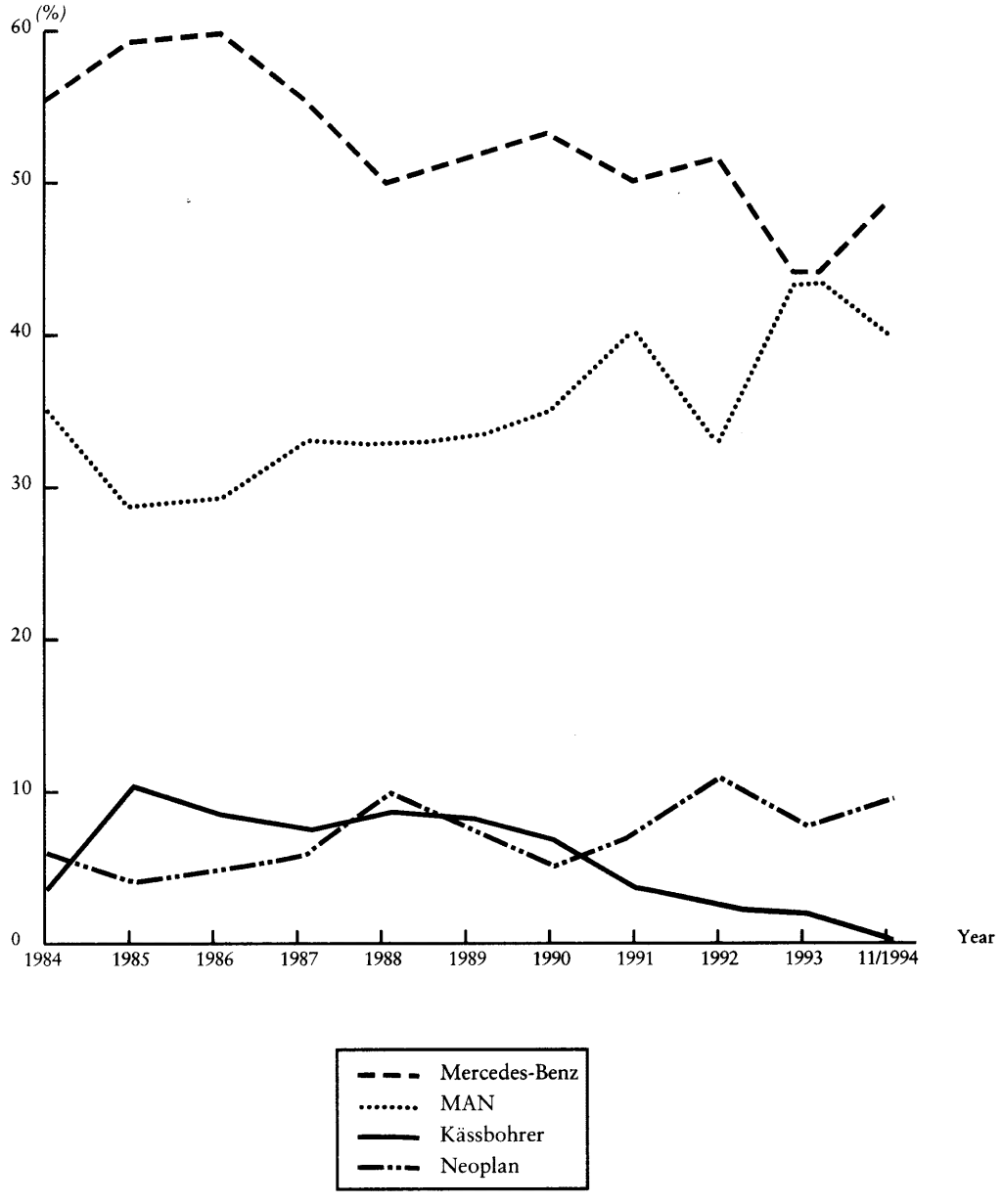


ANNEX Ib

COMPARISON OF MARKET SHARES IN GERMANY

City buses

(1984 to 1994)

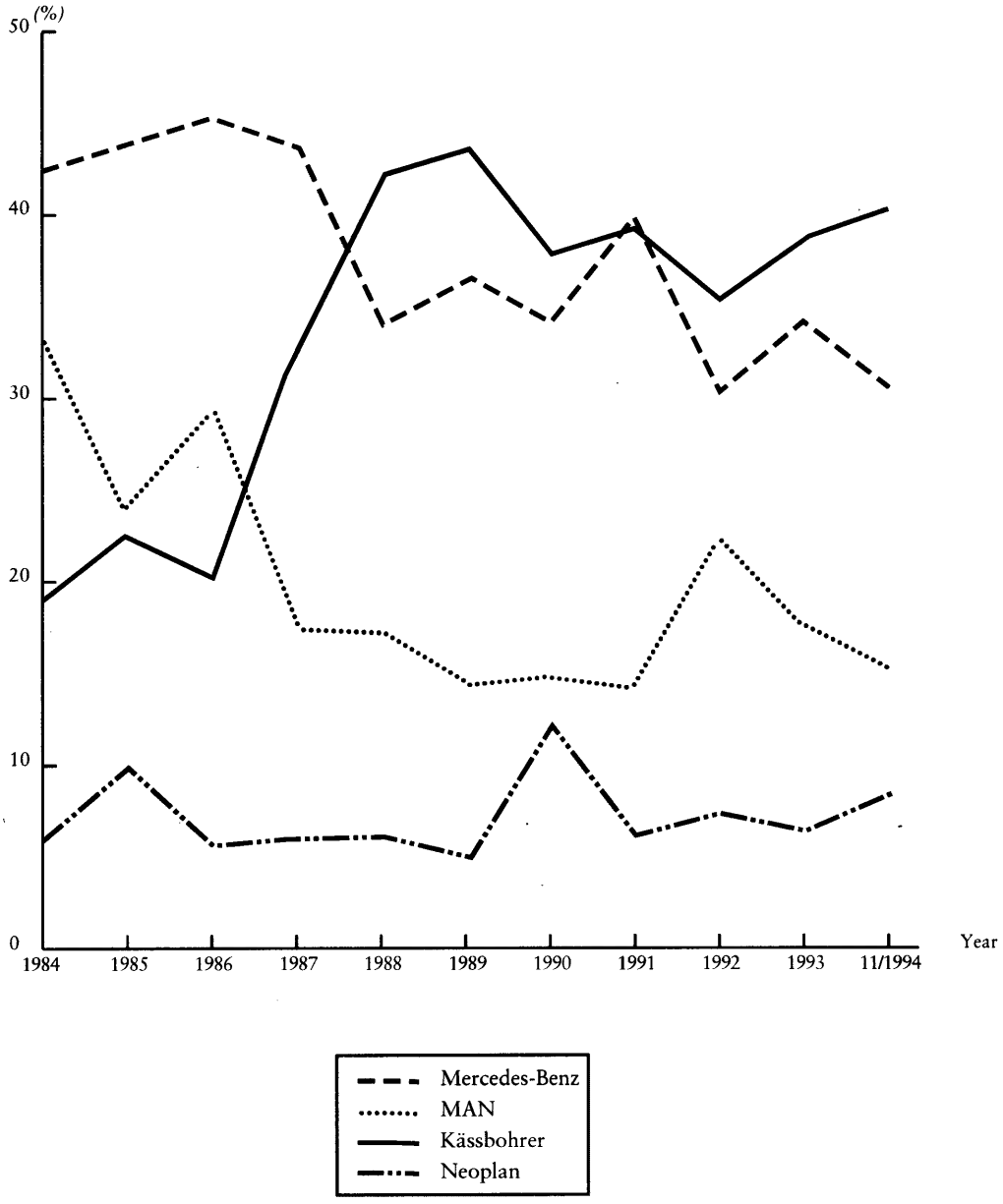


ANNEX Ic

COMPARISON OF MARKET SHARES IN GERMANY

Intercity buses

(1984 to 1994)

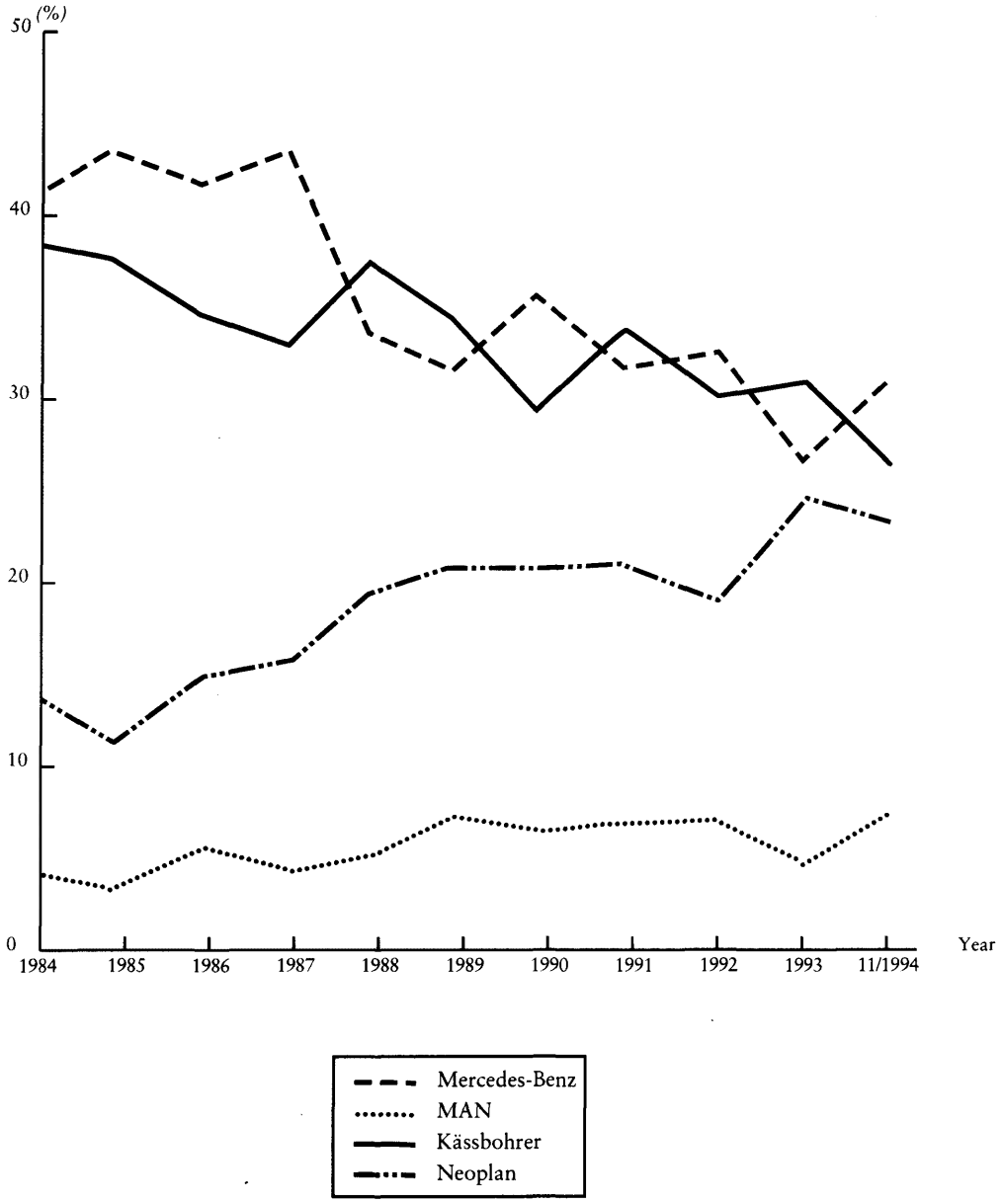


ANNEX Id

COMPARISON OF MARKET SHARES IN GERMANY

Touring coaches

(1984 to 1994)



ANNEX II

Market shares in the different bus markets in Germany (1993)

	City buses		Intercity buses		Touring coaches		Total buses	
	volume	(%)	volume	(%)	volume	(%)	volume	(%)
Mercedes-Benz	1 174	42,9	691	34,6	528	24,1	2 393	34,6
Kässbohrer	45	1,6	782	39,1	708	32,4	1 535	22,1
Parties combined	1 219	44,6	1 473	73,7	1 236	56,5	3 928	56,7
MAN	1 211	44,3	353	17,7	94	4,3	1 658	24,0
Neoplan	208	7,6	129	6,5	608	27,8	945	13,7
RVI	—	—	—	—	—	—	47	0,7
Volvo	—	—	—	—	—	—	41	0,6
Scania	97	3,5	23	1,1	225	10,3	13	0,2
Bova	—	—	—	—	—	—	106	1,5
Other foreign	—	—	—	—	—	—	138	2,0
Other German	—	—	22	1,1	25	1,1	47	0,7
	2 735	100	2 000	100	2 188	100	6 923	100

ANNEX III

PRODUCT PROGRAMME MERCEDES-BENZ

Market	Type	Market position	Characteristics	Combi possible (1)	Basis	Price range (2) (List price, DM 1 000)
City	O405	City	Classic city	No	City	527—548
	O405N	City	Low floor city	No	City	565—611
Intercity (3)	O404NÜ	Intercity	Low floor intercity	No	City	575—586
	O407	Intercity	Intercity	Yes, but mainly intercity	City	509—524
	O408	Intercity/Combi	Intercity	Yes, but mainly intercity	City	493—508
	O404RH-K	Intercity/Combi	Combi	Yes	Coach	588—612
Coach	O340	Coach	Classic coach	Not suitable (4)	Coach	—
	O404RH	Coach	Classic coach	Not suitable (4)	Coach	617—693
	O404RHD	Coach	Classic coach	Not suitable (4)	Coach	640—774
	O404SHD	Coach	Classic coach	Not suitable (4)	Coach	729—829

(1) 'Combi' means that a bus is designed for both intercity and tourist travel.
(2) Prices are only indicative of price differences between types and not the market price level, since discounts are normally given.
(3) Buses classified as intercity buses all qualifiy for subsidies under the GVFG ('Gemeinde Verkehrs Finanzierungsgesetz').
(4) 'Not suitable' means that the bus is basically not designed for regional line service. Furthermore, it does not qualify for subsidies under the GVFG ('Gemeinde Verkehrs Finanzierungsgesetz'). It would therefore, as well as due to its high level of equipment, not be profitable in regional line service.

ANNEX IV

PRODUCT PROGRAMME OF KÄSSBOHRER

Market	Type (new model)	Market position	Characteristics	Combi possible (1)	Basis	Price range (2) (List price, (DM 1 000)
City	S215SL	City	Classic city	No	Coach	462
Intercity (3)	S215NR	Intercity	Low floor intercity	No	Coach	484
	S215UL (S315UL)	Intercity	Intercity	Yes, but mainly intercity	Coach	433
	S215RL	Intercity/Combi	Combi	Yes	Coach	441—464
	S215HR (S315H)	Intercity/Combi	Combi	Yes	Coach	440—469
Coach	S215HRI-GT (S315GT)	Coach	Classic coach	Not suitable (4)	Coach	493
	S215HH (S315HD)	Coach	Classic coach	Not suitable (4)	Coach	661—685 (698—727)
	S216HDS	Coach	Classic coach	Not suitable (4)	Coach	685—710
	S328DT	Coach	Double decker	Not suitable (4)	Coach	911

(1) 'Combi' means that a bus is designed for both intercity and tourist travel.
(2) Prices are only indicative of price differences between types and not the market price level, since discounts are normally given.
(3) Buses classified as intercity buses all qualify for subsidies under the GVFG ('Gemeinde Verkehrs Finanzierungsgesetz').
(4) 'Not suitable' means that the bus is basically not designed for regional line service. Furthermore, it does not qualifiy for subsidies under the GVFG ('Gemeinde Verkehrs Finanzierungsgesetz'). It would therefore, as well as due to its high level of equipment, not be profitable in regional line service.

ANNEX V

Mercedes-Benz
The Board
20 December 1994

Commission of the European Communities
Rue de la Loi 200
B-1049 Brussels
Belgium

Case No IV/M.477 — Mercedes-Benz/Kässbohrer

Dear Sirs,

In the event of a decision of compatibility in accordance with Article 8 (2) of Regulation (EEC) No 4064/89 we provide the Commission with the following undertakings:

1. After the acquisition of Karl Kässbohrer Fahrzeugwerke GmbH, Mercedes-Benz will require the former to send to its distributors and service stations in Germany the letters attached in Annexes 1 and 2. By these means it (Mercedes-Benz) will ensure that foreign bus competitors, including their German subsidiaries, can establish long-term contractual relations with the German distribution and service partners of Kässbohrer.

2. Mercedes-Benz will supply on a non-restrictive basis to European bus producers, who do not engage in engine production and who do not also otherwise have legal group-company links with an engine producer, Mercedes-Benz engines for buses sold in the European Economic Area. The conditions of supply will be non-discriminatory as compared with supply to internal bus operations. This is in particular valid for prices, price discounts, delivery times, warranties and maintenance as well as other contractual conditions. Through this other bus manufacturers will be able to neutralize competitive disadvantages they might encounter with the use of other engines for bus supply in the European Economic Aera. Should the undertakings give rise to unforeseen distortions of competition, Mercedes-Benz can examine the undertakings in agreement with the Commission.

Yours faithfully,

The Mercedes-Benz company

(signed)
Dr Gottschalk

(signed)
Zimmer

Annex 1

Letter of Karl Kässbohrer Fahrzeugwerke to distributors in Germany

Distribution Agreement

Dear Sirs,

Under the distribution agreement between you and us, you are only entitled to act for other companies and, in particular, for competitors of the (Mercedes-Benz) group with our approval. Having regard to the positive conclusion of the European Commission in Brussels to the merger control procedure in the case Mercedes-Benz AG/Karl Kässbohrer Fahrzeugwerke GmbH, we inform you that in the future you are also entitled to act, apart from our group, for foreign bus competitors including their German subsidiaries, whether it be in distribution on the basis of a representation or a dealer contract or whether it be in customer service on the basis of a service station contract. This will not change the conditions governing our cooperation. However, we request you to inform us of such a step. In addition, we assume that a possible such activity for a competitor will not impair your organization's performance and efficiency with respect to our products.

Yours faithfully,

Annex 2

Letter of Karl Kässbohrer Fahrzeugwerke to service stations in Germany

Service station contract

Dear Sirs,

Having regard to the positive conclusion of the European Commission in Brussels to the merger control procedure in the case Mercedes-Benz AG/Karl Kässbohrer Fahrzeugwerke GmbH, we would like to confirm that we have no objections if in the future you were to act for foreign bus competitors including their German subsidiaries, whether it be occasionally or whether it be on the basis of a comprehensive service station or service contract. This will not change the conditions governing our cooperation. However, we assume that this will not impair your organization's performance and efficiency with respect to our products.

Yours faithfully,
