COMMISSION

COMMISSION DECISION

of 20 June 2001

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

(Case No COMP/M.2201 — MAN/Auwärter)

(notified under document number C(2001) 1643)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/335/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Having regard to the Commission Decision of 15 February 2001 to initiate proceedings in this case,

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

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Whereas:

(1) On 3 January 2001, MAN Nutzfahrzeuge AG, Munich, (MAN) notified the Commission pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation) that it proposed to acquire sole control of the whole of Gottlob Auwärter GmbH & Co., KG, Stuttgart-Möhringen (Auwärter).

(2) After examining the notification, the Commission concluded on 15 February 2001 that the notified operation fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the common market.

(3) Following thorough investigation of the case, however, the Commission has now come to the conclusion that the proposed merger will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

[1] OJ L 395, 30.12.1989, p. 1; corrigendum OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ L 106, 3.5.2001.

I. THE PARTIES

(4) MAN is a German limited company whose activities comprise the design, manufacture and marketing of trucks, buses and components and the provision of related services. MAN is an integrated manufacturer which produces complete trucks and buses. The company is a wholly-owned subsidiary of MAN Aktiengesellschaft, Munich, the controlling company which heads the MAN group; the MAN group's main business activities include commercial vehicles, steel products, diesel engines, printing machines, steel and components for the aerospace industry.

(5) Auwärter's activities consist in the design, manufacture and marketing of buses under the 'Neoplan' brand name. Auwärter is an independent, but not integrated, bus manufacturer which purchases engines in particular, from suppliers such as MAN and Mercedes-Benz. 80 % of the shares in the company are held by members of the Auwärter family and 20 % by BWK Kapital-Beteiligungsgesellschaft, Stuttgart.

II. THE OPERATION

(6) The proposed concentration is to be carried out through the acquisition of all of the shares in Auwärter by MAN through a wholly-owned MAN subsidiary to be set up for this purpose. Following the concentration, the merged company will, according to its own estimates, produce around 7 500 buses and chassis annually, achieving a turnover of some DEM 2,5 billion. Pursuing a two-brand strategy, the company plans to continue manufacturing buses under both brand names (MAN and Neoplan) after the merger and to market them separately.

III. THE CONCENTRATION

(7) MAN will acquire sole control of Auwärter through the proposed operation. This constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

(8) The two undertakings have an aggregate worldwide turnover of more than EUR 5 billion [4] (MAN: EUR 14,5806 billion in the financial year ending on 30 June 2000, Auwärter: EUR 435,06 million in the financial year ending on 31 December 1999). MAN and Auwärter each have an aggregate Community-wide turnover of more than EUR 250 million (MAN: EUR 8,6981 billion in the financial year ending on 30 June 2000, Auwärter: EUR 347,8 million in the financial year ending on 31 December 1999), of which not more than two thirds is achieved within one and the same Member State. The notified concentration therefore has a Community dimension (Article 1(2) of the Merger Regulation). However, the operation does not constitute a cooperation case under Article 57 of the EEA Agreement.

V. PROCEDURE

(9) By letter of 25 January 2001 addressed to the Commission, MAN, in a bid to dispel any misgivings regarding the merger, offered to supply bus manufacturers that did not have their own engine-production facilities and that had until now been supplied with engines by MAN or by one of its subsidiaries with engines on normal market terms even after the merger. MAN made the same offer in a circular to its customers. As a result of this commitment offer, the period for preliminary examination under Article 10(1) of the Merger Regulation was extended from one month to six weeks.

(10) On 15 February 2001, the Commission decided, pursuant to Article 6(1)(c) of the Merger Regulation, to initiate proceedings.

[4] Turnover was calculated on the basis of Article 5(1) of the Merger Regulation and the Commission notice on calculation of turnover (OJ C 66, 2.3.1998, p. 25). Pursuant to Article 5(4)(c) and (d) of the Merger Regulation, the turnover of the parent company MAN AG and of the other subsidiaries of the MAN group were added to the turnover of MAN Nutzfahrzeuge AG; in calculating the turnover of Auwärter, the turnover of Auwärter's associate companies was similarly taken into account.

(11) On 20 April 2001, a statement of objections was sent to MAN, to which it replied in writing on 4 May 2001. On 7 May 2001, at MAN's request, a formal hearing was held in Brussels pursuant to Article 14 of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings [5].

VI. **COMPETITION ASSESSMENT**

(12) The main impact of the proposed concentration would be on the bus sector in Germany. However, it would not lead to the creation or strengthening of a dominant position either in Germany or in other parts of the European Economic Area.

A. *THE RELEVANT PRODUCT MARKETS*

(13) In its previous decisions, and in particular in Decision 95/354/EC [6] in case IV/M.477 — Mercedes-Benz/Kässbohrer, and in the recent Decision 2001/403/EC [7] in case COMP/M.1672 — Volvo/Scania, the Commission has identified three different market segments for buses: city buses, intercity buses and touring coaches. Despite possible overlaps between the three market segments, the Commission has consistently regarded them as separate product markets and sees no reason in the present case to depart from that classification.

City buses

(14) City buses are designed for public transport in urban areas. They are used for carrying a large number of passengers over relatively short distances and for relatively short periods of time. Accordingly, city buses provide a large amount of room for standing passengers. City buses also tend to have a low floor with few if any steps, as well as more and wider doors than other types of buses, so as to allow rapid passenger entry and exit [8]. The main customers are public municipal and local transport undertakings and private bus operators providing public passenger transport on the basis of concessions.

Intercity buses

(15) Intercity buses are designed for rural transport and intercity travel. In line with the nature of the service, ease of entry and exit are less important in intercity buses than in city buses. Intercity buses are normally not particularly luxuriously equipped. From a technical point of view, despite the growing importance of low-floor technology, they are for the most part not low-floor buses and generally have significantly more powerful engines than city buses, though less powerful engines than touring coaches. The main customers are regional public bus operators and private companies operating scheduled cross-country services, mostly on a concessionary basis. Some of the customers also operate city buses.

Touring coaches

(16) Touring coaches are intended to serve the leisure market, mainly for long-distance tourist travel. They tend to be higher than city and intercity buses and are equipped in a comparatively luxurious manner. In particular, they are often equipped with special storage space for luggage, air conditioning, toilets and television screens, which make such buses more suitable for long trips. Low-floor technology and ease of entry and exit are not prime features. A touring coach will normally be equipped with a manual gearbox, whereas city and intercity buses tend to have automatic gearboxes. The main customers are private operators of leisure trips and bus travel.

[5] OJ L 61, 2.3.1998, p. 1.
[6] OJ L 211, 6.9.1995, p. 1 (recital 9 and following).
[7] OJ L 143, 29.5.2001, p. 74 (recital 214 and following).
[8] Pursuant to Article 3(1) of Common Position (EC) No 50/2000 adopted by the Council on 28 September 2000 (OJ C 370, 22.12.2000, p. 1), vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat are to be made accessible for people with reduced mobility including wheelchair users according to the technical provisions laid down therein.

Results of the market investigation

(17) The market investigation carried out confirmed very clearly that this classification into three relevant product markets remains valid. On the basis of the different purposes for which they are used and in view of the typical differences in customers, the three types of bus can be rationally differentiated from one another. The fact that some overlaps may occur between the individual product markets (for example, some types of bus can be used both in intercity transport and for touring) is not enough in itself to indicate any sufficient degree of substitutability.

B. *THE RELEVANT GEOGRAPHIC MARKETS*

(18) In Case IV/M.477 — Mercedes-Benz/Kässbohrer [9], national markets were assumed for all three product segments, with the question of whether Germany and Austria formed a single geographic market being left open. In its recent Decision in case Volvo/Scania [10], the Commission considered that Finland and the United Kingdom were separate geographic markets for touring coaches, while Ireland and each of the Nordic countries (Sweden, Finland, Norway and Denmark) formed separate geographic markets for city and intercity buses; for the rest, the precise definition of the relevant geographic markets was left open.

(19) MAN takes the view that at least the Benelux countries, Germany, Austria, France, Spain, Portugal and Italy now form a single relevant geographic market. This, it argues, is due in particular to essentially uniform certification rules and prices. Particularly in the city and intercity bus segments, invitations to tender, under the influence of the EC directives on public supply contracts, had resulted in price-oriented procurement behaviour that no longer gave the home suppliers any domestic advantage. The entry of foreign bus manufacturers on to the market in recent years had also fostered the development of supra-regional, cross-frontier geographic markets.

(20) The market investigation carried out pointed to an emerging trend towards Europeanisation. In particular, Community-wide invitations to tender following the transposition of EU procurement law [11] and increasingly similar technical standards indicated that the relevant geographic markets may be starting to extend beyond national frontiers. At the same time, however, in Germany in particular, significant factors continue to point to the existence of national markets. Such factors include the continuing small proportion of imports, especially in the city and intercity segments and, in particular, the high technical and quality demands which German bus operators and their associations place on manufacturers [12].

(21) The definition of the relevant geographic markets can, however, be left open in the present case, since the merger will not lead to the creation or strengthening of a dominant position either on the basis of the market assumed by MAN (see recital 81) or on the basis of national markets. In particular, the question of whether Germany and Austria should be grouped together as a single geographic market may be left open, since this would not affect the assessment of the operation (see recitals 61 to 63, 72 and 79).

C. *COMPATIBILITY OF THE MERGER WITH THE COMMON MARKET*

(22) As a result of the merger the number of German bus manufacturers would fall from three to two. In the city bus sector in Germany the parties would be on an almost equal footing with EvoBus; if one assumes that Germany and Austria form one market, they would have a slight edge on EvoBus. As far as market shares are concerned, the merger would not affect the existing position of MAN as leader on the Austrian market for city and intercity buses, nor would it affect EvoBus's position as leader on the German intercity bus market or on the German, Austrian and Danish touring coach markets.

[9] Commission Decision of 14 February 1995, recital 39 (see footnote 6).
[10] Commission Decision of 14 March 2000, recitals 248 and 259 (see footnote 7); confirmed by the Commission Decision of 1 September 2000 in Case COMP/M.1980 — Volvo/Renault (OJ C 301, 21.10.2000, p. 23), recital 28.
[11] See in particular Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ L 199, 9.8.1993, p. 1) and Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 9.8.1993, p. 84).
[12] Particular mention should be made of the role played by the Association of German Transport Undertakings (Verband Deutscher Verkehrsunternehmen — VDV), Cologne, which influences the purchasing behaviour of its members by issuing recommendations, for example on the design of the driver's workstation.

(23) The Commission has carried out an extensive market investigation in the course of which it received on the demand side in particular submissions from 206 operators of city and intercity buses in Germany. Views were also sought from associations of undertakings, especially the Verband Deutscher Verkehrsunternehmen (Association of German Transport Undertakings — VDV) as the body representing customers' interests. The investigation also covered all major competitors of the companies involved in the merger and the parties themselves.

(24) The following overview (Table 1) shows the parties' market shares, as confirmed by the market investigation, on the German (D), Austrian (A) and, as an alternative, German-Austrian (D+A) city bus, intercity bus and touring coach markets, and on the Danish (DK) touring coach market, and compares them with those of their main competitors.

Table 1: Market shares for 1999 based on the number of new registrations

Product market	Geographic market	MAN	Auwärter (Neoplan)	MAN + Auwärter	EvoBus (Mercedes, Setra)	Volvo	Irisbus [1]	Other
City buses	A	63,8 %	0 %	63,8 %	34,4 %	1,8 %	0 %	0 %
	D	39,5 %	8,9 %	48,4 %	49,4 %	1,2 %	0,5 %	0,5 %
	D + A	42,2 %	7,9 %	50,1 %	47,7 %	1,2 %	0,4 %	0,6 %
Intercity buses	A	56,5 %	0 %	56,5 %	26,5 %	6,8 %	10,2 %	0 %
	D	17,4 %	15,3 %	32,7 %	59,9 %	3,9 %	1,2 %	2,3 %
	D + A	20,2 %	14,2 %	34,4 %	57,5 %	4,1 %	1,8 %	2,2 %
Touring coaches	A	7,7 %	16,9 %	24,6 %	63,4 %	4,9 %	2,5 %	4,6 %
	D	9,5 %	19 %	28,5 %	51,6 %	1,0 %	4,1 %	14,8 %
	D + A	9,2 %	18,7 %	27,9 %	53,2 %	1,6 %	3,8 %	13,5 %
	DK	4,5 %	16,9 %	21,4 %	48,3 %	3,4 %	9 %	17,9 %

Source: notifying parties and Commission investigations.

[1] Irisbus is a joint venture between Renault SA and Fiat-owned Iveco in which both companies have merged their bus businesses (see the Commission Decision of 22 October 1998 in Case IV/M.1201 — Renault V.I/Iveco, OJ C 384, 10.12.1998, p. 9). In the merger control procedure COMP/M. 1980 — Volvo/Renault, Renault undertook to terminate the joint venture (see the Commission Decision of 1 September 2000, OJ C 301, 21.10.2000, p. 23, Annex III).

1. THE MARKET FOR CITY BUSES IN GERMANY

(25) According to the information in the Commission's possession, a total of 1 757 city buses were newly registered in Germany in 1999, accounting for 32,4 % of all new bus registrations there. The market volume is dependent on the requirements of transport undertakings and is therefore liable to fluctuate somewhat. After increasing sharply for a while in the wake of German unification, demand for city buses is now tending to stagnate and no appreciable changes in market volume are to be expected in the future.

(a) ***There is currently effective competition on the German city bus market despite a high level of concentration on the supply side.***

(26) Even pre-merger the situation on the German city bus market is characterised by a high level of concentration on the supply side. And yet there is currently effective competition on this market. This was confirmed during the market investigation by the vast majority of those competitors and customers whose views were canvassed. The German bus manufacturers' market shares have till now fluctuated vis-à-vis one another, varying, depending on the manufacturer, by between three (Neoplan), four (EvoBus) and 10 percentage points (MAN). Nor has the influence of EC public procurement law ([13]), which has now been transposed into German law and is applied in practice, led in the current market situation to any competitive pressure between the three domestic suppliers. The Commission's investigations have also revealed that prices on the city bus market have remained

([13]) See footnote 11.

essentially stable, which in view of recent improvements in technology and equipment translates into an actual price cut. The margins of MAN and Auwärter are according to the parties almost non-existent, not to say negative, and in recent years this has meant losses for both manufacturers. As a result MAN, for example, has opened production plants in Turkey and Poland; Mercedes-Benz also has a plant in Turkey.

(b) ***Post-merger the number of German bus manufacturers would fall from three to two, although Auwärter has no appreciable influence on competition.***

(27) Post-merger the number of German bus manufacturers would fall from three to two. With Auwärter there would disappear a supplier who latterly (in 1999) could claim an 8,9 % share of the German city bus market.

(28) The Commission has come to the conclusion, however, that the products offered by Auwärter as 'city buses' differ to a not inconsiderable degree from those of its competitors and are only partly in competition with competitors' products. Although like its two German rivals, EvoBus and MAN, Auwärter also supplies standard city buses, according to the parties it has concentrated in recent years more on the production of vehicles for certain niche markets. Auwärter is in the eyes of many customers a particularly innovative and flexible manufacturer when it comes to fulfilling individual desiderata. Thus in 2000 such niche products as double-decker city buses, 'midi-buses' (short buses approximately 10 metres in length), electricity- or gas-powered vehicles, and trolley- or duo-buses accounted for some 45 % of Auwärter's total output. Large parts of Auwärter's product range in the city bus sphere therefore compete only to a limited extent with the products of MAN, which on its own admission concentrates mainly on the 'mass market' in the area of standard city buses.

(29) According to the parties, Auwärter has deliberately refrained from increasing its market share in the city bus sphere. The company sees its strength as lying above all in the development and production of touring coaches. The city bus business has been pursued mainly with a view to absorbing existing, seasonal capacity surpluses in the touring coach sphere. In view of the narrow profit margins in city buses and the fact that, unlike those of its competitors, its production structure is not geared to the production of large series, Auwärter is unable to expand city bus output profitably.

(30) The Commission's market investigation confirmed that Auwärter is scarcely in the running when it comes to competing for large-customer contracts. The 76 fleets owned by large bus companies with over 100 buses covered by the investigation are with one exception dominated exclusively by EvoBus and MAN. Auwärter is by contrast predominantly present in the small and medium-sized bus company segment, the importance of this firm as a competitor on the city bus market being further diminished as a result.

(31) The findings of the market investigation also fit in with this picture inasmuch as the vast majority (about 75 %) of the customers whose views were sought stated that Auwärter's involvement in the past had not influenced the result of calls for tenders for city buses. In particular, the involvement or non-involvement of Auwärter had no detectable effect on prices.

(c) ***The Commission has considered carefully whether post-merger there may be a tacit sharing of markets between EvoBus, on the one hand, and the parties, on the other.***

(32) Following the take-over of Auwärter, MAN would have a 48,4 % market share (based on the data for 1999) and would therefore rank second on the German city bus market, just behind EvoBus (49,4 %). Under these circumstances the possibility that the merger might enable the parties to exercise market dominance on the German city bus market can be ruled out. Nevertheless there is among the remaining German bus manufacturers a tendency towards consolidation and stabilisation of their position on the market. Although market shares in procurement markets are of only limited evidential value ([14]), the above market share figures suggest *prima facie* a symmetrical duopoly consisting of EvoBus and the new entity, MAN/Auwärter. Against this background and in view of the resulting high combined market shares of MAN/Auwärter and EvoBus (in 1999 they together accounted for 97,8 % of the German city bus market), it had to be considered whether the merger was liable to create a joint dominant position on the German city bus market and hence in a substantial part of the common market.

([14]) See the Commission decision of 3 April 2001 in Case COMP/M.2139 — Bombardier/ADtranz (recital 39), OJ L 69, 12.3.2002, p. 50.

(33) The Commission accordingly carried out an in-depth examination to see whether, following the merger, there might not occur, as between the two market leaders, tacit coordination of their market behaviour with the result that the current approximately 50-50 division of the German city bus market between EvoBus and the new entity MAN/Auwärter would be permanently consolidated. Precisely because the market shares of the two remaining German manufacturers are already almost virtually identical, both would benefit from this situation in equal measure. This would depend, however, on both of them refraining from aggressive price competition aimed at improving their own market position and on their being satisfied instead with the market shares they already have, and on the structure of the market actually admitting in the long term of tacit, non-collusive coordination.

(34) In contrast to collusion, tacit coordination of the behaviour of market players by no means implies that there are any agreements or contacts between them. It accordingly fell to be considered in the present case whether after the merger such tacit coordination might suffice in order to exclude any mutual competition between the two market leaders in Germany and to enable both sides in the longer term to secure higher prices and profits than would have been the case under conditions of competition.

(35) The possibility of tacit coordination of competitive behaviour is not precluded by the mere fact that contracts are awarded in response to public invitations to tender ([15]). Even if procurement markets do not lend themselves to the traditional forms of deliberate parallel behaviour in respect of prices or quantities (such cases have already been the subject-matter of a number of Commission decisions ([16])), tacit market-sharing may nevertheless take place on a procurement market depending on the award procedure used. The firms concerned might, for example, tacitly consider elements of the existing market situation, such as the presence of a significant number of regular customers, to be a pointer as to who should in future win which contract, and they might tailor their future bidding behaviour accordingly ([17]).

(d) ***In the present case, however, the particular circumstances militate against there being any tacit coordination.***

(36) In the present case, however, the Commission has come to the conclusion on the basis of its market investigation that, in view of the peculiarities of the German city bus market, there is no risk of any tacit coordination between the two remaining German bus manufacturers.

(37) For there to be a collective dominant position on the part of EvoBus and MAN/Auwärter, there must first of all be some evidence of specific criteria on the basis of which the two market leaders might tacitly coordinate their competitive behaviour. Secondly, it must be proved in the light of the circumstances surrounding the case in point that any such tacit coordination is also possible in the long term, that is to say, there must be evidence to suggest that the nascent duopoly is sufficiently stable. In the present case the results of the market investigation that was carried out do not furnish such evidence. In fact, the position of the two leading suppliers on the German city bus market is less symmetrical than would at first appear from their most recent market shares.

No tacit coordination of competitive behaviour with regard to the companies' respective regular customers

(38) First of all, market-sharing might be conceivable along the lines of the companies' respective regular customers, i.e. those customers in whose fleets the buses of one manufacturer are used either exclusively or predominantly (more than 75 %). For this to happen, the two market leaders would both have to behave passively and refrain from attacking the position of the other with regard to its customers through aggressive tendering.

([15]) See Commission Decision 97/25/EC of 18 October 1995 in Case IV/M.580 — ABB/Daimler-Benz, OJ L 11, 14.1.1997, p. 1 (in particular recital 89) and the Commission Decision of 28 June 2000 in Case COMP/M.1741 — MCI Worldcom/Sprint (at recitals 257 to 302, and in particular at recital 263), not yet published.

([16]) See, for example, Commission Decision 92/553/EEC of 22 July 1992 in Case IV/M.190 — Nestlé/Perrier, OJ L 356, 5.12.1992, p. 1 (in particular at recital 124) and Commission Decision 97/26/EC of 24 April 1996 in Case IV/M.619 — Gencor/Lonrho, OJ L 11, 14.1.1997, p. 30 (in particular recital 186).

([17]) See also the Decision MCI Worldcom/Sprint (see footnote 15), recitals 257 to 302, and in particular recital 263.

(39) In the course of the market investigation 80 German transport undertakings (43 %) stated that they operated a single-make fleet or that more than three quarters of their fleet consisted of buses made by a single manufacturer. It became apparent, moreover, that smaller city bus operators in particular often possess a fleet clearly dominated by one make. Of the abovementioned 80 cases, more than two thirds are such smaller businesses with fewer than 100 buses. After the merger, the number of fleets dominated by the buses of one manufacturer would increase from 80 to 86 (see Table 2).

(40) More than one third of those questioned stated that compatibility with the existing fleet was in their view a decisive selection criterion in the context of invitations to tender, one of the reasons being to save the cost, were they to change makes, of retraining maintenance and operating personnel, of procuring special tooling and of keeping a supply of spare parts. In principle the manufacturer of the buses used exclusively or predominantly in a particular fleet thereby gains a competitive advantage. This might reduce the incentives for the other manufacturer to attack this position in the context of invitations to tender, e.g. through particularly aggressive bids.

(41) The danger that both market leaders might seek to maintain the existing division of the market by concentrating on their respective regular customers is lessened by the relatively small total number of buses used in such single-manufacturer-dominated fleets. The market investigation carried out by the Commission revealed that two thirds of all the buses covered are in mixed fleets equipped to the tune of no more than 75 % with the vehicles of one manufacturer; they do not, therefore, enter into the equation as far as the described method of coordination is concerned. Tacit coordination through mere concentration on the companies' respective regular customers would accordingly from the outset concern only about one third of all city buses and is therefore not suited to maintaining the existing, approximately 50-50 division of the German city bus market.

(42) A further reason why an equal division of the market through each company concentrating on its own regular customers is unlikely is that, as the market investigation showed, there is a strong imbalance between the fleets dominated by Evobus and those dominated by MAN. Thus, 54 of the abovementioned 80 cases involve fleets dominated by EvoBus with a total of some 3 400 buses (including approximately 2 900 made by EvoBus), compared with only 26 cases involving fleets in which MAN buses are operated either exclusively or predominantly (with a total of some 1 900 buses, including approximately 1 800 made by MAN). After the merger, 32 of the transport undertakings concerned would operate either exclusively or predominantly buses made by the new entity, MAN/Auwärter (see Table 2). There is clearly a marked disparity between EvoBus, on the one hand, and MAN/Auwärter, on the other. In the long term, therefore, an approximately 50-50 division of market shares could — in contrast to what was postulated above — not be maintained by each of the two market leaders refraining from aggressive tendering vis-à-vis the regular customers of the other.

Table 2: Detailed overview: number of German city bus operators with single- or multi-make fleets

Fleet type and composition	Total premerger (1)	Of which 'Evobus-fleets'	Of which 'MAN-fleets'	Total post-merger (1)	Of which 'EvoBus-fleets'	Of which 'MAN/ Neoplan-fleets'
Fleets with buses made by only one manufacturer	30	19	11	33	19	14
Over 95 % of buses made by one manufacturer	12	11	1	13	11	2
> 80 %-95 % of buses made by one manufacturer	24	12	12	25	12	13
> 75 %-80 % of buses made by one manufacturer	14	12	2	15	12	3
Subtotal	80	54	26	86	54	32

Fleet type and composition	Total premerger (1)	Of which 'Evobus-fleets'	Of which 'MAN-fleets'	Total post-merger (1)	Of which 'EvoBus-fleets'	Of which 'MAN/ Neoplan-fleets'
> 60 %-75 % of buses made by one manufacturer	53	30	23	60	30	30
Up to 60 % of buses made by the most strongly represented manufacturer	44	28	16	37	23	14
Subtotal	97	58	39	97	53	44
Total	177	112	65	183	107	76

Source: data collected by the Commission in the course of its market investigation.
(1) The pre-merger totals relate exclusively to fleets in which either EvoBus or MAN is the strongest manufacturer; for the post-merger period, the corresponding figures for Neoplan are included and assigned to the MAN/Neoplan entity. According to the information in the Commission's possession, Neoplan buses are currently most strongly represented in six fleets.

No tacit coordination of competitive behaviour with regard to customers with mixed fleets and the total number of buses sold

(43) A tacit division of the market between MAN/Auwärter and EvoBus might also be conceivable with regard to those transport undertakings which operate mixed fleets. In all, 97 municipal bus companies (53 % of those questioned) stated that at most three quarters of the vehicles in their fleets came from one manufacturer. In relation to such customers EvoBus and MAN/Auwärter could in the medium term likewise refrain from attacking, through suitably aggressive bids, each other's position in the fleets of certain transport undertakings once their own position there was consolidated by winning contracts. In this way, transport undertakings with mixed fleets might come to be perceived by EvoBus and MAN/Auwärter as falling *de facto* within the sphere of influence of one or the other.

(44) However, there is again no risk of such a development aimed at achieving an approximately 50-50 division of the market occurring. In view of the procurement behaviour of larger customers in particular, such a division could not be implemented in practice. The larger the transport undertaking, the more likely it is to employ a 'diversified procurement strategy', that is to say, it deliberately aims at a mixed composition of its fleet, buying buses from two or more manufacturers so as to play off one against the other ([18]). It is not to be expected that the takeover of Auwärter by MAN will have an appreciable effect on the opportunities of city-bus operators to pursue a multiple sourcing policy. The vast majority of mixed fleets surveyed by the Commission have EvoBus (Mercedes Benz or Setra) and MAN as the two most prominent manufacturers. Auwärter (Neoplan), on the other hand, barely plays a role as the number two brand in mixed fleets ([19]). This result is supported by the bus operators interviewed of which more than 75 % stated that the participation of Auwärter in the past did not influence the outcome of the tenders (see recital 31).

(45) The Commission also examined whether it would be possible to divide up the market by reference to the make of the buses in a fleet to be replaced by new buses. If, when an invitation to tender was issued, it was quite clear which buses were to be replaced and the buses in question were all of the same make, the two German market leaders could maintain their existing market shares by each concentrating on replacement business for buses of their own make and refraining from aggressive tendering in all other cases.

(46) However, it was apparent that tendering practice on the German city-bus market does not lend itself to this type of dividing-up of the market. Invitations to tender for city buses do not contain any indication of which particular buses are to be replaced. Nor, according to the transport operators, is it clear, at the time when the invitation to tender is issued, which particular buses are to be replaced.

([18]) Fewer than 10 % of the larger transport undertakings with at least 100 buses taking part in the market investigation operate purely single-make fleets.
([19]) In more than 90 % of the mixed fleets surveyed Evobus and MAN are the two strongest manufacturers. Auwärter is among the top two brands in less than 10 % of the mixed fleets.

The question of which buses are to be withdrawn from service is often decided only after an invitation to tender has been completed, since such a decision depends on a number of factors (duration of existing advertising agreements ([20]), economic efficiency of continued operation once the period during which public assistance is earmarked has expired ([21]), etc.) which are not directly related to the invitation to tender.

(47) Lastly, it is conceivable that the manufacturers might focus on the total number of buses sold over a given period and refrain from competing actively with one another as long as both companies' market shares are fairly evenly balanced. In this way, those transport undertakings whose fleets are currently equipped in almost equal measure with buses made by both market leaders might be included in a tacit division of the market between EvoBus and MAN/Auwärter. The supplying of customers whose fleets consist of more than one make by one or other of the two market leaders might thus serve to fine tune volume-wise the postulated 50-50 split in the market.

(48) This line of argument can be countered, however, by pointing to the increasing size over recent years of the contracts on offer. The number of buses sought by way of invitation to tender has thus risen on average from 21-22 in the past to 25-26 at present. The scale of individual invitations to tender will, moreover, increase still further in view of the emerging trend towards the formation of sizeable purchasing cooperatives ([22]) and the emergence of sizeable privatised transport undertakings ([23]). Since at the same time the market volume as a whole is stagnant (see recital 25), there is a tendency towards fewer invitations to tender per year. But the smaller the number of invitations to tender and the larger the number of buses asked for at the same time per invitation to tender, the more unlikely it is that either of the two market leaders will be prepared to relinquish the contract in favour of the other.

(49) Customers can, moreover, compare a manufacturer's bids with its bids in other tender procedures. In addition, in more than half of all cases foreign manufacturers also take part in tender procedures concerning city buses in Germany, and their bids can likewise serve as a yardstick. Although the success of foreign bus manufacturers in Germany has so far been fairly limited, more than three quarters of the transport undertakings questioned by the Commission, who account for over 95 % of city bus purchases in Germany, stated that they were prepared in future, in the event of a price increase of between five and 10 %, to acquire buses from other manufacturers, including foreign ones. The refusal of a tenderer to compete actively would therefore necessarily be noticed and its prospects of success in tender procedures would be considerably reduced.

Lack of stability of any tacit coordination due to a number of competition parameters

(50) Furthermore, the large number of criteria governing the award of contracts in the present case makes any coordination difficult, and in the long term it would undermine the stability of any supposed coordinated behaviour.

([20]) Thus, according to the information in the Commission's possession, many buses are painted with large advertisements which can be transferred to a new bus only at considerable expense.

([21]) This period varies as a rule between eight and 10 years depending on the *Land*. The useful economic lifetime of a city bus can, however, be anything up to 15 years, which means that bus companies have a sizeable window of up to seven years in which to procure replacements.

([22]) Talks are, for example, taking place about a merger between the Cologne and Bonn municipal bus companies. As far as purchasing cooperatives are concerned, the municipal bus companies of Dortmund, Bochum, Herne and Castrop-Rauxel together with the Vestische Straßenbahnen bus company have, for example, been issuing joint invitations to tender since 1998 (Eastern Ruhrgebiet Cooperative Association); the municipal bus companies of Wuppertal, Hagen, Solingen and Remscheid (Bergischer Bus) are doing likewise.

([23]) The planned reform of the Community provisions on public passenger transport can be expected to speed up considerably the formation of sizeable bus companies operating in more than one municipality. In particular, there are plans to amend Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1), as last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29.6.1991, p. 1). The Commission's proposal for an amendment provides, *inter alia*, for an obligation to put municipal public passenger transport services out to tender, requiring existing suppliers to compete with other suppliers (see Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway of 26 July 2000, COM(2000) 7 final, OJ C 365 E, 19.12.2000, p. 169).

(51) City buses are less heterogeneous products than they might at first appear. The detailed requirements in the transport undertakings' tender specifications contribute, rather, in each individual invitation to tender to a high degree of homogeneity being attained in the technical characteristics of the vehicles to be offered by the manufacturers. Moreover, the requirements laid down by customers are in most invitations to tender largely identical to the recommendations of the VDV ([24]), with the result that on the German market a not inconsiderable degree of uniformity is by and large attained ([25]).

(52) However, the acceptance of a bid in the case of invitations to tender for city buses does not by any means depend solely on the basic price of a given model, but instead on a large number of additional selection criteria; in particular, life-cycle costs and guarantees as to the reliability and availability of buses play an increasingly important role. The manufacturer is increasingly expected to provide guarantees as to the residual value of a bus at the end of its useful lifetime. And the guarantee of a round-the-clock customer service and speedy spare-part delivery is nowadays frequently a *sine qua non* for success in the market. As a result of the interplay of all these parameters, mutual monitoring of each other's competitive behaviour, e.g. on the basis of volume and price, is ruled out for both market leaders. Consequently the companies concerned can scarcely verify to what extent the other market leader has deviated from the postulated coordinated behaviour. This would, however, be a necessary precondition for any retaliatory behaviour between them and for maintenance of the postulated tacit coordination ([26]).

(53) The reduction in the number of German bus manufacturers from three to two by no means implies that the number of bidders in the case of public invitations to tender in the German market will likewise fall from three to two. In point of fact, foreign manufacturers are increasingly competing with German suppliers for major contracts, participating as they do in over half of all tender procedures in Germany. This circumstance too makes any long-term coordination of the two market leaders' competitive behaviour more difficult to achieve and impedes any mutual monitoring, all the more so as a significant number of customers are proving increasingly willing to switch if necessary to foreign manufacturers for their supplies (see recital 49).

Lack of a sufficient degree of structural similarity between MAN/Auwärter and EvoBus

(54) For the prospective duopoly to last, MAN/Auwärter and EvoBus would have to exhibit a sufficient degree of structural similarity. Despite their having certain features in common, this could not, however, be established to a sufficient extent.

(55) MAN/Auwärter and EvoBus both wish to employ a two-brand strategy — albeit under the umbrella of a single management — aimed at manufacturing and marketing separately buses of two different makes. Both companies will at the same time manufacture commercial vehicles (trucks); this will produce benefits in the R&D sphere and when it comes to purchasing and producing components. They will also be able to use their workshops and service networks both for buses and for commercial vehicles. Through MAN and Mercedes-Benz they will both have their own bus engine manufacturing facilities, and they both have production plants in third countries such as Poland and Turkey, from whose lower wage structures they benefit. Lastly, both companies enjoy to a comparable degree considerable advantages over their existing or potential foreign competitors, including the two densest networks of maintenance centres and repair shops in Germany, a country-wide presence in the fleets of German transport undertakings and the brand loyalty of smaller customers especially.

(56) These shared characteristics cannot, however, outweigh the fundamental differences that exist between the new entity MAN/Auwärter and EvoBus — differences which create a considerable imbalance between them. To understand this, one need look no further than the different emphasis both manufacturers place on the bus market as a whole and on the commercial vehicle side.

([24]) See, for example, VDV documents Nos 230, 'Outline recommendations for low-floor city buses' of June 1994 and 234, 'Drivers' workstations in low-floor buses' of June 1996 (current version dating from October 2000).
([25]) See the Decision MCI Worldcom/Sprint (see footnote 15), recital 258 and following.
([26]) See the Commission decision of 29 September 1999 in Case IV/M.1383 — Exxon/Mobil (recital 474 of the provisional public version).

EvoBus thus assembles four times as many buses as MAN and Auwärter put together, and its parent, the DaimlerChrysler group, produces approximately eight times as many buses and commercial vehicles as MAN/Auwärter. It is important to note in this connection that interchangeable components, i.e. components which can be used both in the manufacture of commercial vehicles and in that of buses, account according to the parties for between 20 % and 30 % of the value of an average city bus. Because of its substantially higher output of buses and commercial vehicles, the DaimlerChrysler group will therefore continue in future to enjoy considerable scale benefits compared with the new entity MAN/Auwärter. There is therefore insufficient symmetry between the two market leaders, particularly as regards cost structures, such symmetry being, however, a precondition for the existence of a stable duopoly ([27]).

(e) ***Conclusion: the proposed merger is not likely to give rise to the emergence of a dominant duopoly on the German market for city buses.***

(57) For the above reasons the Commission concludes that the effective competition currently prevailing on the German city bus market will not be undermined by the proposed merger and the resulting disappearance of Auwärter (Neoplan) as an independent supplier. The facts as established by the Commission do not provide any justification for assuming the possibility of tacit coordination. The proposed transaction cannot therefore be regarded as being such as to create a dominant duopoly in the German market for city buses.

2. THE CITY BUS MARKET IN AUSTRIA

(58) According to the Commission's information, a total of 218 city buses were newly registered in Austria in 1999, equivalent to 33,6 % of all newly registered buses in the country. MAN is the clear market leader (63,8 %), followed by EvoBus (34,4 %) and Volvo (1,8 %).

(59) The merger does not lead to any addition of market shares since Auwärter was unable to sell any buses on this product market in Austria in 1999 and 2000. Isolated sales of between three and thirteen vehicles in previous years, which resulted in market shares of between 1,7 % (1998/1999) and 8 % (1996/1997) ([28]), were made by Auwärter's Bavarian representative to Vorarlberg and were not the result of tenders. Auwärter's establishment in Austria has hitherto sold only touring coaches. The takeover of Auwärter by MAN thus removes from the market only a niche supplier which has been unable in the last two years to sell any vehicles and thus ranks at best as a potential competitor. However, there is no danger that the merger will significantly strengthen MAN's position on the Austrian market.

(60) In spite of the strong positions of EvoBus and the market leader MAN, effective competition currently exists on the city bus market in Austria. Since its takeover of the Austrian manufacturer Steyr Bus GmbH, Volvo is the third-strongest market participant and has been consistently more successful than Auwärter over the last five years. Given this market situation, the disappearance of Auwärter as a potential competitor does not give rise to any competition concerns regarding the merger.

3. THE CITY BUS MARKET IN GERMANY AND AUSTRIA

(61) According to the Commission's information, a total of 1 975 city buses were newly registered in Germany and Austria in 1999, corresponding to 32,4 % of all newly registered buses in both Member States. Taking the city bus markets in Germany and Austria together, MAN had a market share of 42,2 % and Auwärter 7,9 % (giving a combined figure of 50,1 %), while EvoBus had 47,7 %. The balance of market power between MAN/Auwärter and EvoBus on a combined German/Austrian market is, therefore, essentially the same as that on the German market alone (see recital 32).

([27]) See the Decision Exxon/Mobile (recital 476 of the provisional public version, see footnote 26). On the importance of cost structures, see the Decision Nestlé/Perrier (see footnote 16, recital 63).
([28]) The figures relate to MAN's financial year (which begins on 1 July and ends on 30 June of the following year).

(62) The conditions of competition on a German/Austrian market for city buses would be similar to those in Germany. In particular, the market leaders and the other bus manufacturers active on the market in both Member States are largely the same. In addition, given the common language, there is a close link between the markets of both Member States, and this leads not least to similar business practices. For example, as far as their purchasing intentions are concerned, transport firms in Austria largely follow the recommendations issued by the VDV in Germany.

(63) Consequently, the conclusions drawn for the German market can be applied to the larger geographic market referred to (see recital 57).

4. THE INTERCITY BUS MARKET IN GERMANY

(64) According to the Commission's information, a total of 1 922 intercity buses were newly registered in Germany in 1999, corresponding to 35,2 % of all newly registered buses in the country. EvoBus is the clear market leader (59,9 %), followed by MAN (17,4 %), Auwärter (15,3 %) and Volvo (3,9 %).

(65) The conditions on the intercity bus market are similar to those on the city bus market although some individual aspects are less pronounced. For example, the technical and quality requirements for intercity buses are high, albeit not as high as those for city buses; in addition, individual customers' requirements regarding intercity buses differ, albeit not as much as those for city buses. Public tenders are held for the purchase of intercity buses, albeit less frequently than on the city bus market. There are few foreign manufacturers on the market but more than on the city bus market; their market share is over 7 % and is on a slowly rising trend. Overall, there is at present effective competition on the intercity bus market in Germany.

(66) In view of the clear market leadership of EvoBus, the possibility that the merging of the parties on the German market for intercity buses will result in dominance of an individual market can be ruled out. The highly asymmetric distribution of the market shares of MAN/Auwärter on the one hand (32,7 %) and of EvoBus on the other (59,9 %), in contrast to the situation on the city bus market, is a further factor suggesting that there will be no joint market dominance. For the rest, since market conditions are similar (see recital 65), the conclusions for city buses (see recital 57) can essentially be applied to the intercity bus market in Germany.

5. THE INTERCITY BUS MARKET IN AUSTRIA

(67) According to the Commission's information, a total of 147 intercity buses were newly registered in Austria in 1999, corresponding to 22,7 % of all newly registered buses in the country. MAN is the clear market leader (56,5 %), followed by EvoBus (26,5 %), Irisbus (Renault) (10,2 %) and Volvo (6,8 %).

(68) The merger does not lead to any addition of market shares since Auwärter was unable to sell any buses on this product market in Austria in 1999 and 2000. The sales figures for the preceding years too, which ranged from zero to three vehicles and resulted in market shares of between 0 % (1997/1998) and 1,8 % (1996/1997) ([29]), confirm that Auwärter is of minor importance on the intercity bus market in Austria. The takeover of Auwärter by MAN thus leads at most to the removal of a niche supplier that has been unable to record any sales over the last two years and thus ranks at best as a potential competitor. There is no danger that the merger will significantly strengthen MAN's position on the Austrian market.

(69) Even more than on the city bus market, competition on the intercity bus market in Austria is safeguarded by the greater presence of suppliers from non-German-speaking countries. Take in particular the recent entry onto the market of Irisbus (Renault) ([30]), which within one year has captured 10,2 % and, on the basis of MAN's financial year 1999/2000 ([31]), as much as 26 % of the market.

([29]) The figures relate to MAN's financial year (which begins on 1 July and ends on 30 June of the following year).
([30]) See footnote 1 in Table 1 (recital 24).
([31]) MAN's financial year 1999/2000 began on 1 July 1999 and ended on 30 June 2000.

(70) In addition, the intercity bus market in Austria is characterised by a high degree of concentration on the part of the bus operators, with the result that there is a considerable measure of countervailing demand power. To this extent, the strong position in particular of the two large intercity bus operators in Austria, the Österreichische Postbus AG and the Österreichische Bundesbahnen (ÖBB), plays a decisive role. The former operates a vehicle pool of some 1 600 buses produced by different manufacturers and pursues a determined diversified procurement strategy aimed at encouraging competition between suppliers, while the latter operates some 800 buses and similarly tends to operate a diversified procurement strategy.

(71) Under these circumstances, the disappearance of Auwärter as a potential competitor does not give rise on the intercity bus market in Austria either to any competition misgivings about the merger.

6. THE INTERCITY BUS MARKET IN GERMANY AND AUSTRIA

(72) According to the Commission's information, a total of 2 069 intercity buses were newly registered in Germany and Austria in 1999, corresponding to 33,9 % of all buses newly registered in both Member States. Taking the city bus markets in Germany and Austrian together, MAN had a market share of 20,2 % and Auwärter 14,2 % (giving a combined figure of 34,4 %), while EvoBus had 57,5 %. The balance of market power between MAN/Auwärter and EvoBus on a combined German/Austrian market is, therefore, essentially the same as that on the German market alone. The same conclusions as those reached above for Germany apply as regards the competition assessment (see recital 66).

7. THE TOURING COACH MARKET IN GERMANY

(73) According to the Commission's information, a total of 1 773 touring coaches were newly registered in Germany in 1999, corresponding to 32,5 % of all newly registered buses in the country. EvoBus is the clear market leader (51,6 %), followed by Auwärter (19 %) and MAN (9,5 %).

(74) The market investigation has shown that there is at present effective price competition on the German touring coach market. Unlike on the city and intercity bus markets, touring coach operators are in virtually all cases private companies that do not receive any state support and must therefore pay particular attention to the price/performance ratio when making new purchases ([32]).

(75) Foreign suppliers ([33]) have contributed to competition on the touring coach market in Germany. They have been able to increase their market share from 10,3 % in 1994 ([34]) to close on 20 % today. Admittedly, the touring coach market in Germany is characterised by a large number of small and medium-sized bus operators among whom in particular cooperation and joint purchasing arrangements are encountered less often than among city and intercity bus operators. Touring coaches are also not generally purchased via public tenders. What is more, most touring coach operators do not have their own maintenance facilities and are, therefore, dependent on the servicing offered by manufacturers or their authorised workshops. As the growing share of imports shows, however, these are not insuperable barriers to market access.

(76) Against this background, the merger between MAN and Auwärter does not give rise to any competition concerns on the touring coach market in Germany. Nor is there any danger of collective market dominance by MAN/Auwärter, on the one hand, and the market leader EvoBus, on the other. Like the abovementioned increase in imports, the asymmetric market shares (MAN/Auwärter: 28,5 %; EvoBus: 51,6 %) also suggest that there is no danger of tacit coordination.

([32]) As regards the price consciousness of private bus operators in particular, see the Decision Mercedes-Benz/Kässbohrer (see footnote 6), recital 51.

([33]) These include the Belgian company Van Hool N.V., the Dutch manufacturers Autobusfabriek BOVA B.V. and Berkhof Jonckheere, the Swedish manufacturers Volvo Bus Corporation and Scania AB, and Irisbus (see footnote 1 of Table 1), recital 24.

([34]) Decision Mercedes-Benz/Kässbohrer (see footnote 6), recital 62.

8. THE TOURING COACH MARKET IN AUSTRIA

(77) According to the Commission's information, a total of 284 touring coaches were newly registered in Austria in 1999, corresponding to 43,8 % of all newly registered buses in the country. EvoBus is the clear market leader (63,4 %), followed by Auwärter (16,9 %), MAN (7,7 %) and Volvo (4,9 %). The non-German manufacturers were able in the past to increase their market share steadily to over 10 % and recorded a market share of 12 % in 1999.

(78) The market investigation has shown that the conditions of competition on the touring coach market in Austria are not substantially different from those in Germany. This is particularly true of customer requirements in the technical field and, as regards quality; prices are also comparable and the same suppliers are active on the market. The conclusions reached for Germany (see recital 74 and following) can therefore be applied to Austria.

9. THE TOURING COACH MARKET IN GERMANY AND AUSTRIA

(79) According to the Commission's information, a total of 2 057 touring coaches were newly registered in Germany and Austria in 1999, corresponding to 33,7 % of all newly registered buses in both Member States. Taking the touring coach markets in Germany and Austria together, MAN had a market share of 9,2 % and Auwärter 18,7 % (giving a combined figure of 27,9 %), while EvoBus had 53,2 %. The balance of market power between MAN/Auwärter and EvoBus on a combined German/Austrian market is, therefore, essentially the same as that on the German market alone. The same conclusions as those reached above for Germany apply as regards the competition assessment (see recital 74 and following).

10. THE TOURING COACH MARKET IN DENMARK

(80) Statistically speaking, the merger will lead to an addition of market shares on the touring coach market in Denmark (MAN: 4,5 %; Auwärter: 16,9 %; combined figure: 21,4 %), with EvoBus remaining the clear market leader (48,3 %). However, MAN, unlike Auwärter, has supplied only chassis to Denmark and not complete buses; it operates, therefore, at a different level of the market than Auwärter. The fact that MAN even so has a share of the market in Denmark is attributable solely to the way in which registration statistics are compiled, showing as they do the chassis manufacturer as the bus manufacturer. Accordingly, this addition of market shares does not given rise to any competition concerns.

11. ASSESSMENT OF THE MERGER ON THE BASIS OF THE GEOGRAPHIC MARKET DEFINED BY MAN

(81) Nor does the proposed merger give rise to any competition concerns on the basis of the geographic market proposed by MAN, which includes Italy, Belgium, Luxembourg, the Netherlands, France, Spain and Portugal as well as Germany and Austria. On that geographic market for city buses, Irisbus has a market share of 30,5 %, EvoBus 24,1 %, MAN/Auwärter 21,5 %, van Hool 5,5 % and Volvo and Scania 3,6 % each. In intercity buses, EvoBus has 33,6 %, Irisbus 32,7 % and MAN/Auwärter 18,46 %. On the market for touring coaches, EvoBus has 33 %, Irisbus 22,5 %, MAN/Auwärter 15,6 %, Volvo 7 % and Scania 6,2 % ([35]).

VII. **CONCLUSION**

(82) It can accordingly be assumed that the proposed transaction will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part thereof. Pursuant to Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, therefore, the transaction should be declared compatible with the common market and with the EEA Agreement,

([35]) All the figures are for 1999.

HAS ADOPTED THIS DECISION:

Article 1

The notified transaction whereby MAN Nutzfahrzeuge AG will acquire sole control of Gottlob Auwärter GmbH & Co., KG within the meaning of Article 3(1)(b) of the Merger Regulation is declared compatible with the common market and with the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

MAN Nutzfahrzeuge AG
Dachauer Straße 667
D-80995 München.

Done at Brussels, 20 June 2001.

For the Commission
Mario MONTI
Member of the Commission