

## Phase Two Approvals

### **Commission Approves MAN's Acquisition of Sole Control over Competitor German Bus Manufacturer Auwärter—Commission Decision**

In June 2001, the Commission cleared the merger of Gottlob Auwärter GmbH & Co. KG by MAN Nutzfahrzeuge AG (MAN) after a Phase II investigation. MAN is a vertically integrated German manufacturer of trucks and busses. Auwärter is also engaged in the development, manufacture, and sale of busses under the brand "Neoplan", but it is not completely integrated and sources components, especially engines, from suppliers such as Mercedes-Benz and MAN. The decision is significant in that the concentration reduced the number of competitors in the German market from three to two but was nevertheless cleared, following a close oligopoly (duopoly) scrutiny.

**Market definition.** The Commission followed its practice established in *Mercedes-Benz/Kässbohrer* and *Volvo/Scania* in identifying three different product markets: the market for city busses, the market for intercity busses, and the market for touring coaches. As to geographic markets, the Commission did not take a clear position. It found evidence of developing EU-wide markets but on the other hand tended to assume the existence of national German and Austrian markets because of low imports and high technical and quality requirements in these countries. The question was left open as no dominant position was established or strengthened under either national or EU-wide market definitions.

**Competitive assessment.** As noted, the transaction reduced the number of significant competitors on the German bus markets from three to two, leaving EvoBus as the only remaining competitor to a combined MAN/Auwärter. The Commission analyzed the German, Austrian and German-Austrian markets for city busses, intercity busses and touring coaches. In addition, it assessed the Danish market for touring coaches. The principal competition concerns arose in the German market for city busses where MAN/Auwärter and the principal competitor EvoBus split the market with close to 50% each.

**The German market for city busses.** Despite the concentration on the supply side, the German market for city busses was found to be competitive. Auwärter did not play a significant role in this market before the merger as it focuses mostly on niche products such as trolley- and duo-busses and vehicles with electric or gas engines, whereas MAN mainly produces standard city busses. Furthermore, Auwärter was not a serious competitor to MAN with regard to large customers.

The Commission then assessed whether following the concentration MAN/Auwärter and EvoBus could engage in various duopoly strategies. In theory, the two entities, holding almost equal shares of the market (MAN/Auwärter 48.4%, EvoBus 49.4%), could implement a scheme of collective dominance even against the backdrop of the public bidding system that applies in Germany. The Commission analyzed the market in view of several criteria to determine if cooperation could lead to a permanent and stable duopoly.

To begin with, the Commission examined whether the players could perpetuate the existing near-equal distribution by agreeing or tacitly colluding not to try to compete for the other's established customer base. The Commission found such a strategy would not succeed. Only a limited number of busses are part of single-brand bus fleets, and it is unrealistic to consider the parties would refrain from competing in mixed fleets. EvoBus supplies a far larger number of bigger bus fleets than MAN/Auwärter. With regard to customers that maintain mixed-brand bus fleets, the Commission concluded that tacit collusion seems even less feasible. Large customers intentionally buy different brands in order to reinforce competition between manufacturers, and bids do not contain sufficient detailed information on the busses to be replaced to make collusive bidding possible. The presence of foreign bidders renders it impossible for MAN/Auwärter and EvoBus to be confident of rigging the results; neither was coordination following the

aggregate sales of busses over a certain period of time likely to succeed, the Commission found. Bus purchases are made increasingly on a larger scale and on fewer occasions. While the number of auctions declines, the orders are becoming bigger and thus, more valuable to competitors who are therefore less likely to collude. Based on its analysis, the Commission concluded that any attempts of the parties to tacitly coordinate their behavior would fail.

In addition, the Commission noted that MAN/Auwärter and EvoBus do not exhibit enough structural similarities to maintain a stable duopoly. Overall, EvoBus produces approximately four times more busses of all types than MAN/Auwärter. DaimlerChrysler, which is behind EvoBus, produces about eight times more busses and trucks than MAN/Auwärter. Since the parties indicated that up to 30% of the value of a city bus may consist of parts that are interchangeable with those of trucks, EvoBus thus has a significant cost and scale advantage. In turn, such structural disparities in the cost structures of EvoBus and MAN/Auwärter would undermine a duopoly over time due to differences in incentives. The Commission therefore concluded that the transaction would not create a dominating duopoly on the German market for city busses.

**The other markets under scrutiny.** The markets for city busses and intercity busses in Austria were equally unlikely to be dominated after the merger because Auwärter has not been active there in recent years. Neither did the combination of the Austrian-German markets lead to any change in the competitive situation. On the market for intercity busses in Germany, the Commission found an asymmetric distribution of market shares to the clear advantage of EvoBus that made collective dominance unlikely. No significant differences to the German market were found with respect to the joint German-Austrian market for intercity busses that could give rise to competition concerns. Finally, the Commission assessed the situation on the German, Austrian, German-Austrian and Danish markets for touring coaches and found effective price-competition, increasing imports and clear market leadership by EvoBus.

**Commitments.** During Phase I of the procedure, MAN committed itself to continue to supply engines under customary market conditions to bus manufacturers that do not produce engines themselves and that purchased their engines from MAN previous to the merger. The Commission's clearance decision, however, did not rely on this commitment.

*Case COMP/M.2201, MAN/Auwärter.*

Peter Thyri

### **Acquisition in Railway Transport Technology Approved Subject to Commitments—Commission Decision**

In April 2001, the Commission cleared the acquisition of DaimlerChrysler Rail Systems ("ADtranz") by Bombardier. The Commission concluded that the transaction would create dominant positions in the German markets for regional trains and for trams/light rail vehicles and cleared the merger after the parties offered remedies that eliminated these concerns.

The following elements of the decision are of note: (i) geographic market definition, where a number of the relevant markets were defined as national despite extensive cooperation toward adopting European-level standards for rail equipment and infrastructure; (ii) the analysis of the bidding nature of the relevant markets in the competitive assessment; and (iii) the innovative nature of the commitments.

**Market definition.** The Commission adopted product market definitions that were narrower than in previous decisions concerning railway transport technology (e.g., IV/M.580, *ABB/Daimler Benz*, O.J. L 11/1, 14 January 1997). The Commission defined distinct markets for each of the following products: (i) high-speed trains (e.g., the French *TGV* or German *ICE*); (ii) intercity trains, including self-propelled electrical multiple units ("EMUs") and diesel multiple units ("DMUs") for intercity transport at a speed of