

EN

Case *No*
COMP/M.2446 -
Govia/Connex
South Central

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 9 (3)
Date: 20/07/2001



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.07.2001

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 9(2)(b) DECISION

**Commission Decision
Of 20.07.2001
referring Case No. IV/M.2446 - Govia/Connex South Central to the competent
authorities of the United Kingdom pursuant to Article 9
of Council Regulation No 4064/89
(Case No. IV/M.2446 - Govia/Connex South Central)**

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 1989¹ on the control of concentrations between undertakings ('the Merger Regulation'), and in particular Article 9 thereof,

Having regard to the notification made jointly by The Go-Ahead Group PLC and Keolis S.A. pursuant to Article 4 of the Merger Regulation on 15th June 2001,

Having regard to the communication received from the United Kingdom Government, dated 10th July 2001,

Whereas,

1. On 15th June 2001 The Go-Ahead Group PLC ("Go-Ahead") and Keolis S.A. ("Keolis") notified under the Merger Regulation the operation to acquire joint control of Connex South Central Limited ("South Central") by way of purchase of

¹ OJ L 395, 30.12.1989; corrected version : OJ L 257, 21.9.1990

shares. The notified concentration has a Community dimension for the purposes of Article 1 of the Merger Regulation.

2. A copy of the notification was sent to the competent authorities of Member States on 19th June 2001 and was received by the competent authority of the United Kingdom on 20th June 2001.
3. On 10th July 2001 the United Kingdom, in application of Article 9 of the Merger Regulation, and in particular paragraphs 1, 2(b) and 3 thereof, requested the reference of the notified concentration to the competent authorities of the United Kingdom, on the grounds that the concentration affects competition on certain markets within the United Kingdom for the supply of passenger rail services, which markets present all the characteristics of distinct markets and do not constitute a substantial part of the common market.

I. THE PARTIES AND THE OPERATION

4. **Go-Ahead** is a UK company active in the United Kingdom in the field of transport services mainly train, coach and bus services. Go-Ahead runs the passenger train services in the Thames Trains franchise area of the United Kingdom. Through its participation in Govia, Go-Ahead also operates the passenger train services in the Thameslink franchise area.
5. **Keolis** (formerly known as Via) is a French company ultimately owned by SNCF. Keolis is also active in the transport field mainly in bus, coach, rail and metropolitan railway services. Keolis operates primarily in France, Germany and Sweden. Within the UK, Keolis' only interest in the rail industry is through its participation in Govia (see below), i.e. in the operation of the Thameslink franchise area. (Keolis also has some limited activities in ticket agencies selling Eurostar and SNCF tickets).
6. **Govia** is a shell joint venture company whose sole purpose is to acquire train operating companies ("TOC"s, companies which run train franchises in the United Kingdom) on behalf of its parents, Go-Ahead and Keolis which have joint control over Govia.
7. **South Central** (the target of this transaction which is currently owned by Connex) is a TOC operating passenger rail services in the South Central franchise area of the United Kingdom.
8. Go-Ahead and Keolis (through Govia) will acquire joint control over the whole of South Central. In addition to the share purchase, the Parties have entered into a novation agreement with the UK Strategic Rail Authority (SRA) so that the right of South Central's current owner, Connex UK, to operate train passenger services in the South Central franchise area (pursuant to the original 1996 7-year franchise agreement) could be assigned to the Parties. The SRA awards franchises, through competitive tendering, and also has powers to regulate certain fares by using a price cap and an adjustment to reflect train performance. This is written into the franchise agreement covering the franchise period. The original South Central 1996 franchise agreement is currently being negotiated for renewal in a re-franchising process. Govia has been selected by the SRA as a "preferred bidder"

for the re-franchise. It is expected that the re-franchise process will complete before the end of 2001. Upon completion, the new franchise agreement will come into effect and will replace the original 1996 agreement. Govia expects to be awarded the new franchise for a period of 10-20 years.

9. As a result, post-merger, Go-Ahead and Keolis (through Govia) will be the owners of South Central and will have the right to operate train passenger services in the South Central franchise area under the original, novated 1996 franchise agreement for the period up to the conclusion of the re-franchise. After the expected re-franchise, South Central's right to operate train services in the franchise area will be extended for a period of 10-20 years.

II. CONCENTRATION

10. The operation constitutes a concentration within Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover in excess of 5,000 million ECU. Each undertaking concerned has a Community-wide turnover in excess of 250 million ECU (Go-Ahead Euro 867 million, Keolis Euro [1000-1500] million, South Central Euro 473 million). It is not the case that each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension in accordance with Article 1(2) of the Merger Regulation.

IV. ASSESSMENT

A) Market definition

12. The Commission has dealt with acquisitions of TOCs in the UK in previous decisions (Case M.748 CGEA/Networks South Central, M. 816 CGEA/South Eastern Train Co Ltd and M. 901 Go-Ahead/Thameslink).

Product market

13. The product market in which the parties are active is passenger rail services. The Commission's investigation has revealed that other modes of transport, such as buses and cars, are not substitutes for rail in the franchise area in question. This is in line with the Commission's previous decisions. Therefore, the relevant product market may be defined as the supply of public passenger services by rail.

Geographic market

14. In previous decisions, the Commission defined the relevant geographic area by reference to the extent of the network comprising the railway routes, stations and depots, the operation of which is the subject of the franchise agreement. However, in previous decisions the Commission also indicated that it would be relevant to examine individual point-to-point routes (e.g. Brighton-London). The

Commission's investigation in the present case has revealed that the relevant geographic market may be defined as an individual railway route, since no such route is demand-substitutable for another. Rail travellers, especially business travellers and commuters, do not regard an indirect journey between their point of departure and their intended destination as an acceptable substitute for the direct route, since the indirect journey, usually involving a change of trains, will take significantly longer and be less reliable.

B) Assessment

15. Following a request made by a Member State under Article 9 paragraph (2)(b) of the Merger Regulation the Commission shall, pursuant to Article 9(3), refer a concentration to the competent authority of that Member State if the concentration affects competition on a market within that Member State, which represents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.
16. The UK authorities maintain that the requirements of Article 9(2)(b) are met by the current case. The UK authorities argue that the relevant market in this case is the supply of public passenger transport services by railway on specific routes within the south-central franchise area. The parties overlap on five routes: London/Brighton; London/Gatwick/ Brighton/Gatwick; Redhill/Gatwick; and Sutton/London. Each of the five routes is a distinct market and none is a substitute for another. The UK authorities maintain that the concentration will affect competition on each of these markets, as the following table demonstrates (some figures are not available, but the Commission's investigation has indicated that the overlaps in these cases are not negligible):

	London-Brighton	London – Gatwick	Brighton - Gatwick	Redhill - Gatwick	Sutton – London
South Central	[-]	[0-20]%	[65-85]%	[-]	[75-95]%
Thameslink	[-]	[0-20]%	[15-35]%	[-]	[5-25]%
Thames Trains	[0-20]%	[0-20]%	[0-20]%	[-]	[0-20]%
Combined	[80-100]%	[5-25]%	[80-100]%	[80-100]%	[80-100]%
Gatwick Express	[0-20]%	[75-95]%	[0-20]%	[0-20]%	[0-20]%
Virgin Trains	[0-20]%	[0-20]%	[0-20]%	[0-20]%	[0-20]%

Source: The parties (based on Capri/ATOC data).

17. The UK authorities maintain that none of the markets affected by the concentration constitutes a substantial part of the common market. Each individual overlapping route is confined to a very limited geographic area and represents a very small proportion of the total UK passenger rail services market either in terms of miles or revenue. This is evident from the fact that all five overlapping routes represent less than one third of South Central which itself represents only 12%-14% of total UK rail passenger miles or revenue.
18. The Commission agrees with the arguments put forward by the UK authorities, which have requested that the entire case be referred to them by the Commission, as they have considerable experience of the passenger rail services in the UK since

the restructuring of the rail network began in 1994, and in view of the fact that the concentration has no impact in other Member States, or any major direct impact on cross-border trade.

V. CONCLUSION

19. On the basis of the foregoing, the United Kingdom's request meets the conditions of Article 9(2)(b), and therefore the Commission shall refer the whole case to the UK authorities pursuant to Article 9(3) final subparagraph.
20. Accordingly, the Commission has adopted this decision :

Article 1

The notified concentration is hereby referred in full to the competent authorities of the United Kingdom with a view to the application of national legislation.

Article 2

This decision is addressed to the United Kingdom.

For the Commission

Signed by
Mario MONTI
Member of the Commission