

***Case No COMP/M.4249 -  
ABERTIS /  
AUTOSTRADE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 22/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.09.2006  
**SG-Greffe (2006) D/205359**

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties :

Dear Sir/Madam,

**Subject: Case No COMP/M.4249 - Abertis/Autostrade  
Notification of 18 August 2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

**I. INTRODUCTION**

1. The Commission received on 18 August 2006 a notification of a proposed concentration by which the undertaking Abertis Infraestructuras S.A., (“Abertis”, Spain) belonging to the group Abertis enters into a full merger within the meaning of Article 3(1)(a) of the Council Regulation with the undertaking Autostrade S.p.A., (“Autostrade”, Italy) belonging to the group Autostrade, by way of exchange of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1

## II. THE PARTIES

3. **Abertis** is a Spanish company that resulted from the merger between Acesa Infraestructuras, S.A. and Aurea Concesiones de Infraestructuras, S.A. Abertis is mainly active in the management of toll motorways in Spain, France (through SANEF), Portugal, Italy, United Kingdom, Argentina, Puerto Rico, Chile and Colombia. Moreover, it is also indirectly present in the management of service stations on road sites (through its participation in Areamed 2000, S.A. – “Areamed”); telecommunication infrastructures (through Abertis Telecom, S.A.), management of airports, car parking services, and logistic services.
4. **Autostrade** is currently controlled by Schema28 (which holds a participation of 50.1%), a vehicle company ultimately controlled by the Benetton family. Autostrade is the holding company of Autostrade per l'Italia S.p.A. (“ASPI”), which is the holder of the concession for the management and maintenance of the Italian toll motorway network. The Benetton group is active in many other areas, including concession foodservices on motorways through the company Autogrill.
5. Autostrade is also active in services ancillary to the management of the toll motorways, such as motorway design and engineering, road surfacing and maintenance works (Pavimental), administrative services, motorway traffic information services, sites for communication purposes offered to mobile telecommunication operators.

## III. THE OPERATION

6. The transaction will be carried out through the incorporation of Autostrade in Abertis (“fusión por absorción”/“fusione per incorporazione”). The merger will take place through an exchange of shares (1.05 Abertis shares for each Autostrade share) and the payment of an extra dividend of EUR 3.75 per Autostrade share. As a result of the operation a new entity would be created “New Abertis”.
7. The shareholding composition of the merged entity will be as follows: Schema28: 24.9%; ACS: 12.5%; La Caixa: 11.7%; Caixa d’Estalvis de Catalunya: 2.9%; Sitreba: 2.8%; Treasury stock: 0.7%; Floating capital: 44.5%.

## IV. THE CONCENTRATION

8. The parties argue that Abertis and Autostrade will proceed to a full merger, and that New Abertis will not be controlled by any of its major shareholders, either solely, or jointly.
9. New Abertis will have a board of 23 members. During a first transitory three years period the merged entity’s board of directors will be constituted by the current Abertis’ CEO, [...], plus 11 members appointed by each of Abertis’ and Autostrade’s current shareholders<sup>2</sup>. After the transitory period, the number of directors appointed by each of the shareholders will reflect proportionally the shareholding composition, in line with Spanish corporate law.

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<sup>2</sup> As regards Autostrade, 8 directors will be selected by Schema 28 and 3 will be independent. Among the 11 directors appointed by Abertis, 5 will be selected by ACS, 4 by la Caixa 1 by la Caixa de Catalunya and 1 will be independent. The parties have agreed to appoint [...].

10. According to Abertis' bylaws, day-to-day business resolutions as well as strategic decisions will be taken by absolute majority of the directors in attendance. This means that if the directors were to be all present at the meeting, the majority needed for the adoption of the decisions is twelve. In this regard it is to be noted that no individual shareholder would be entitled to appoint 12 Members of the board.
11. Moreover, no evidence has been found as to the existence of a commonality of interest between the former Abertis' shareholders or among ACS, La Caixa and Schema28 which could possibly indicate the existence of joint control or negative sole control. Each of these companies is active in different sectors and pursues different aims.
12. On the basis of the foregoing, it can be therefore concluded that New Abertis will not be controlled by any individual or group of shareholders and that the transaction is to be qualified as a full merger within the meaning of Article 3(1)(a) of the Merger Regulation.

## **V. COMMUNITY DIMENSION**

13. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (Abertis €3 billion, Autostrade €3 billion). The aggregate Community-wide turnover of each of the undertakings concerned is more than €250 million (Abertis €2,963 million, Autostrade €2,951 million). Whilst Autostrade achieved more than two-thirds of its Community-wide turnover in Italy in 2005, Abertis does not achieve more than two-thirds of its Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of the Merger Regulation.

## **VI. COMPETITIVE ASSESSMENT**

14. The markets concerned by the transaction are the market for the grant of toll motorway concessions, the market for transport on the toll motorway, the market for infrastructure constructions and the markets for ancillary services to the operation of toll motorway facilities.

### **Horizontal effects**

#### **1. Relevant product and geographic market**

##### **A. The market for the granting of toll motorway concessions**

15. The parties have suggested a market for the granting of toll motorway concessions. The grant of toll motorway concessions, usually in tendering procedures, consist in an economic activity where supply is represented by the State and demand by undertakings or consortia of undertakings with an interest in acquiring toll motorway concessions. The Commission has recently considered the possibility to distinguish the market for the grant of toll motorway concessions from the market for the transport on toll motorways.<sup>3</sup> This is in line with previous cases in which the Commission has held that the grant of a

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<sup>3</sup> Case No COMP/M.4087 *Eiffage/Macquarie/APRR*.

licence for the exploitation of a particular State-regulated activity is distinguishable from the running of that particular activity<sup>4</sup>.

16. However, in previous cases, the Commission has left open the exact geographic and product market definition.
17. The results of the market investigation largely confirm the relevant product market definition suggested by the parties and point towards an at least EEA-wide relevant geographic market. However, the exact definition of the relevant geographic market may be left open since, in light of the consideration expressed below, the transaction would not create competition concerns irrespectively of the market definition retained.

### **B. The market for the transport on toll motorways**

18. The Commission previously considered<sup>5</sup> this market as being constituted by the provision of speedy and secure road transport infrastructures between various geographical points (“routes”). The parties argue that both intra-modal and inter-modal competition may exist on a specific route<sup>6</sup> since they believe that the relevant market may be defined as including the management of all transport infrastructures that would be considered substitutable from the user perspective, i.e. roads other than motorways<sup>7</sup>, railways as well as, in limited cases, airplanes.
19. The Commission in previous cases found that it is to be assessed on a route-by-route basis to what extent inter-modal competition exists<sup>8</sup>.
20. The parties, in line with Commission previous decisions, submit that the geographic scope of this market should be defined according to the Origin & Destination method (“O&D”), whereby every combination of a point of origin and a point of destination is considered a separate market from the demand side.
21. The respondents to the market investigation have confirmed the parties’ approach in relation to both the product and geographic relevant markets. However, the exact definition of the product and geographic relevant market may ultimately be left open given that the transaction will not give raise to any competition concerns on any possible definition thereof.

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<sup>4</sup> Case No IV/M.567 *Lyonnaise des Eaux/Nothumbrian Water* and Case No COMP/M.4087 *Eiffage/Macquarie/APRR*.

<sup>5</sup> Case COMP/M.4087 *Eiffage/Macquarie/APRR*.

<sup>6</sup> COMP/M.3770 *Lufthansa/Swiss*.

<sup>7</sup> For instance, in the route between Barcelona and Lleida, there exists intramodal competition between the toll-motorway AP-7 (managed by Abertis) and the free highway/*Autovía* A-2. Likewise intramodal competition is perceptible in the route Orte-Cesena between the toll motorway A1 - managed by ASPI - and the free highway E45.

<sup>8</sup> Case COMP/M.4087 *Eiffage/Macquarie/APRR*.

## **Vertical effects**

### **1. Relevant product and geographic market**

#### **C. Market for construction of infrastructures**

22. In previous decisions, the Commission distinguished the market for large infrastructures work (e.g. roads, railroads, tunnels and bridges) from the market for construction of houses<sup>9</sup>, to account for the different skills, personnel, machinery and other equipment needed to be active on either market. In previous cases it has been argued that a different market for road construction can be distinguished within the larger market for the construction of large infrastructures<sup>10</sup>. A further segmentation of the market for larger infrastructures works, identifying a separate market for the construction of motorways (within the broad market for road construction) has been considered questionable by the Commission in a recent case<sup>11</sup>. In the same case the Commission noted that it seems to exist at least a supply-side substitutability between the road and motorway constructions, numerous companies being active on both segments.
23. The notifying parties submit that the market should be defined as the market for construction of all large infrastructures. The majority of the respondents to the Commission market investigation in this case agree with the product market definition proposed by the parties.
24. The Commission has previously defined the geographic scope of the market as national on the assumption that it is still rare for non-domestic companies to take on construction projects in countries where they are not established (apart from the presence in consortia with domestic companies in case of very large constructions)<sup>12</sup>. The parties followed the same approach in their notification.
25. Conversely, the large majority of the respondents to the Commission market investigation consider the dimension of the geographic market to be wider than national and at least EEA-wide.
26. However, the exact definition of the relevant product and geographic markets may be left open since the appraisal of the transaction will not be altered irrespective of the market definitions retained.

#### **D. Markets for ancillary services to the operation of toll motorway facilities**

27. In its previous practice, the Commission also identified the market for services ancillary to the operation of toll motorway facilities (such as e.g. gas sales, catering, hotel business) and the provision of telecommunication infrastructures<sup>13</sup>. The only vertically related markets

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<sup>9</sup> Case COMP/M.1157 *Skanska/Scancem*.

<sup>10</sup> Case COMP/M.4087 *Eiffage/Macquarie/APRR*.

<sup>11</sup> Case COMP/M.4087 *Eiffage/Macquarie/APRR*.

<sup>12</sup> Case COMP/M.1157 *Skanska/Scancem*, and Case COMP/M.4087 *Eiffage/Macquarie/APRR*

<sup>13</sup> Case COMP/M.4087 *Eiffage/Macquarie/APRR*.

which appear to be relevant for the present case are: the market for concession food services and the market for telecommunication services.

*a) Concession foodservices*

28. The Commission has considered in previous cases a specific market for concession foodservices, consisting in the provision of foodservice requirements to the public in travel related locations such as airports, railway stations, ferries, roadsides, retail related locations such as departments stores and sports stadia and leisure venues<sup>14</sup>. In line with precedent Commission decisions, the parties submit that the geographic scope of this market is at least national and very likely wider<sup>15</sup>.
29. Most of the respondents to the market investigation agree with the definition of the relevant product market suggested by the parties. As regards the geographic dimension of such market, the market investigation confirmed it is most likely national in scope but it may be wider. However a few respondents point towards a possible narrower product market, including exclusively the provision of foodservices on toll motorways. Some of these respondents then argued that the geographic dimension of such a narrower product market would be narrower than national.
30. However, it does not appear necessary to ultimately conclude on the exact scope of both the geographic and product market since the appraisal of the transaction will not be altered irrespective of the market definitions retained.

*b) Telecommunication services*

31. The services related to the management of the toll motorway include the provision of telecommunication infrastructures, i.e. the management of sites and other telecommunication installations, such as ducts or dark optical fibre (long distance infrastructure), along the motorway networks.
32. The precise definition of the product market may be left open since the transaction does not lead to any concern in this market.
33. The parties believe that this market has a national dimension. Whether, for the purposes of this decision, the geographic market definition should be considered as national or wider can be left open since on either alternative market definition competition would not be significantly impeded in the EEA or in a substantial part of it.

**Competitive analysis**

**Horizontal Overlaps**

**A. The market for the grant of toll motorway concessions**

34. The parties do not have overlapping activities at national level in this market. Autostrade is only active in Italy whereas Abertis does not have any controlling stake in a company active in this country. Moreover, the number of tenders to which they have

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<sup>14</sup> Case IV/M.1972 *Granada/Compass*.

<sup>15</sup> Case COMP/M.3728 *Autogrill/Altadis/Aldeasa*.

simultaneously participated in the last five years is very limited. In addition, a number of companies active at international level as well as local competitors have successfully participated to the same or to other tenders in Italy, Spain and other European countries. Thus, other operators appear as well placed as Abertis in relation to the markets in which Autostrade is active and vice versa. Such competitors will be able to exercise a sufficient competitive pressure on the merged entity even post-merger.

35. The parties' activities overlap, only on the market for the grant of toll motorway concessions at EEA level.
36. According to the parties' estimates, the resulting entity would have a market share equal to [25-35]%<sup>16</sup> at EEA level and well below [10-20]% at world-wide level. At EEA level the parties would be the first players, the main competitors being Vinci (with a market share of [15-25]%) whereas the remaining competitors would have a market share ranging between [5-10]% and [0-5]%<sup>17</sup>.
37. The parties submitted that the transaction would not create any competition concerns in a hypothetical European market for the grant of motorway concession in light of (i) their limited market share on this market; (ii) the fact that concessions are awarded through public bids; (iii) the tenders are regulated by national and European procurement rules and (iv) the number of bidders participating to such tenders is increasing in the last years.
38. The information provided by the parties as well as the market investigation has proved that in the last five years numerous European undertakings, including Sacyr (Spain), Eiffage (France) or Cintra (Spain) submitted bids for the same bidding processes where Abertis and/or Autostrade participated. Moreover, the respondents to the market investigation did not express serious concerns in relation to this market.
39. The presence of other significant competitors, the fact that this is a bidding market subject to open and transparent procedures and the absence of third parties' concerns lead to exclude that the proposed transaction could have anti-competitive effects on the EEA market for the grant of toll motorway concessions.

## **B. The market for the transport on toll motorway**

40. Based on the above approach to the definition of the relevant geographic market (which has been confirmed by the respondents to the market investigation), the activities of the parties would never overlap in this market anywhere within the EEA. There are therefore no grounds for competitive concerns on any such product market.

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<sup>16</sup> [25-35]% on value (toll revenues in €) and [20-30]% in volume (Kms. of toll motorways).

<sup>17</sup> In terms of revenues.



## Vertical Overlaps

### C. Construction markets

41. Autostrade is active in this market only to a limited extent through Pavimental, a company providing services mainly intra-group.<sup>18</sup> Abertis is not active in this sector. However, one of its main shareholders (ACS) is active in the building sector. At a national level, Pavimental's and ACS' activities do not overlap, since Pavimental is not active outside Italy and ACS is not active in Italy. At EEA-level the overlap would be immaterial, given the very limited scope of Pavimental's activity. Competitive concerns at EEA level can therefore be excluded.
42. A few respondents to the market investigation have highlighted the possibility that the proposed transaction could lead to foreclosure effects on the market for the building of large infrastructure. In particular, they claim that the combined entity would favour ACS in the tenders for the execution of works on the motorways it manages to the detriment of its competitors.
43. In this respect, it is to be noted that ACS will not hold a controlling stake in the merged company and thus it will not be able to influence the tenders for the granting of works. Moreover, it is not in New Abertis' interest, as a customer, or in the interest of New Abertis' other shareholders than ACS, to favour ACS in granting contracts for the execution of works and/or to increase ACS' market power since this will increase New Abertis' costs.
44. At a national level, in France and Spain the transaction would not bring any change, given that the vertical link between ACS and Abertis (and Sanef) is pre-existent to the proposed merger. The situation would change as a result of the transaction only in Italy. However, the fact that ACS is not present in Italy and the divergent interests between New Abertis and ACS exclude that the transaction might give rise to competition concerns relative to possible foreclosure effects in Italy.

### D. Market for ancillary services to the operation of toll motorway facilities

#### *a) Concession food services*

45. Some of the respondents to the Commission's market investigation voiced some concerns in relation to the impact of the proposed concentration in the market for concession foodservices on motorways in Spain, Italy and France.
46. Abertis is active in the provision of concession food services in Spain through Areamed2000 ("Areamed"), a joint venture in which Abertis currently holds a 50% stake (the remaining 50% belongs to an independent company, Areas). Areamed is solely active in part of the motorway network managed by Abertis<sup>19</sup> in Spain.

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<sup>18</sup> It has a [0-5]% market share (including the services provided intra-group) on the Italian market for construction of infrastructure.

<sup>19</sup> Following the information of the parties this part corresponds to the routes operated by ACESA (541 kms comprising the references AP-7 Barcelona-La Jonquera, C-32 Montgat-Palafolls, AP-7 Barcelona-Tarragona, C-33 Barcelona-Granollers AP-7 Montmeló- El Papiol, AP-2 Zaragoza-Mediterráneo).

47. According to the parties, Areamed is no more than a holding company: it was created [...]. Areamed does not have any employees or expertise to manage concession foodservices. The day-to-day operation of the [30-40] outlets is provided by Areas. Through the joint venture Abertis perceives a fee as a percentage of the revenues originated by the [30-40] outlets managed by Areas on the Acesa network. In its response to the market investigation, Areas confirmed the parties' submissions and also indicated that Areamed does not own any brands. The brands of the outlets belong to the operators of the different services<sup>20</sup>. Areas is separately active as a bidder for concessions and has its own concessions comprising [30-40] outlets out of a total estimated number of foodservice outlets on Spanish toll motorways of [120-140].
48. The overlap with the activities of Areamed comes from Edizione Holding which, via Schema 28, will be one of New Abertis' major shareholders<sup>21</sup>. Edizione Holding controls Autogrill, a company providing food services on motorways in France, Spain and Italy. Hence the proposed transaction creates a structural link between Areamed and Autogrill.

### *Spain*

49. The market for concession foodservices on toll motorways is highly concentrated in Spain, with two main players, Areas (the other parent company of Areamed) and Autogrill. They, including the [30-40] outlets of Areamed, have an estimated combined market share in the range of [70-80]%. Areamed and Autogrill have together a combined market share of around [45-55]%<sup>22</sup> on such a market. On a wider market definition (be it the provision of foodservices to the public in travel-related locations, or the provision of food services in travel and non travel related locations) their presence would be limited given the large number of competitors for food concession services.
50. However looking at the way in which the foodservice outlets are distributed along Abertis' network there are no overlaps in the activities of Autogrill and Areamed. Their respective outlets (as well as Area's) are all located in a row in distinct Abertis concession areas. Hence there is no real competitive constraint of one company on the other.
51. Some respondents to the market investigation have expressed the concern that the vertical integration between Areamed and New Abertis as well as the simultaneous participation of Edizione Holding (and the Benetton family) in both New Abertis' (via Schema28) and its Autogrill's shareholding could create foreclosure effects on the market for concession foodservices. In particular, the combined entity could discriminate in favour of Autogrill and Areamed when tendering the concessions for foodservices in motorways in Spain.
52. Moreover, given that Edizione Holding will be represented in the boards of directors of both Abertis and Autogrill, it may have access to privileged information as regards sub-

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<sup>20</sup> For petrol stations brands of Repsol, Cepsa and Agip, and for foodservices brands of Areas (Ars, Medas and La Pausa, mainly).

<sup>21</sup> Edizione Holding, owns 60% of Schema 28, which itself will own 24.9% of the "New Abertis".

<sup>22</sup> [45-55]% in value (turnover in €) and [45-55]% in volume (number of outlets).

concessions to be awarded by Abertis in the future. Therefore Autogrill would be granted a competitive advantage compared to other competitors.

53. Finally, the proposed concentration could possibly lead to the co-ordination between Autogrill and Areamed on the provision of foodservices to end-customers and possibly in relation to the bids for the award of the concession.
54. Pursuant to the legislation<sup>23</sup> in force in Spain regulating motorway sub-concessions of service areas, it is the Public Administration awarding the concession which has the exclusive authority to decide over the location and services that can be rendered in the service areas. The concessionaire must submit to the contracting authority for its approval a general report on the location of service areas. The contracting authority shall require also specific modifications and adaptations which the concessionaire must comply with. A final resolution by the contracting authority will set up the details of the service areas. These will be incorporated to the construction project. In summary, the need to create service areas, their location and their main features always respond to a decision by the contracting authority.
55. As a result, the concessionaire would be responsible only of the choice of the sub-concessionaire. The parties have explained that in Spain concessionaires can exploit service stations areas either directly themselves or by means of sub-licenses to third parties. However, they are not obliged by national law to launch public tender procedures to award the management of those services areas to a third party.
56. Generally, the interest of motorway concessionaires and foodservice providers are divergent. When contracting with foodservice providers, motorway concessionaires usually aim at maximising their own revenues and requiring significant investment from the foodservice provider. On the contrary, foodservice providers are essentially interested in reducing, to the maximum possible extent, the amount of royalties to be paid to the motorway concessionaire and the amount of investments to be carried out within the service areas.
57. Because of these divergent interests, any advantage granted by New Abertis to either Areamed or Autogrill would necessarily imply a loss of revenues for New Abertis. New Abertis has therefore a strong incentive to have recourse to competitive bids in view of maximising its revenues, regardless of the circumstance that the foodservice provider could be related companies or not. Empirical evidence confirms this conclusion. Although legally speaking Abertis could grant the sub-concession of foodservices outlets in its network in Spain without a prior public tender procedure, in practice the sub-concessions in this market are granted through open and competitive bids.
58. Moreover, in relation to a risk of Autogrill being favoured, it is to be noted that Edizione Holding will not control New Abertis. This limits the possibilities of Edizione Holding to exercise decisive influence on its business conducts so as to favour Autogrill in the tenders. The other shareholders would have an interest to oppose a preferential treatment of Autogrill since it would increase New Abertis' costs whilst not giving them any share of Autogrill's profits.

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<sup>23</sup> Decree 215/1973, Pliego de cláusulas generales para la construcción, conservación y explotación de autopistas en régimen de concesión, as amended by "Real Decreto" 114/98.

59. Furthermore, as already explained above, Autogrill, Areamed and Areas have all their outlets located in distinct areas of the motorway. It appears likely that the situation would not change in the future even absent the merger, since it would be in the interest of the motorway concessionaire to divide the motorway it manages in different areas and to allocate the entirety of this area to the same sub-concessionaire, instead of locating the different outlets next to other. If it were to do so, the foodservice concessionaires might decrease their revenues and, as a consequence, the royalties paid to the motorway concessionaire. As a result it appears therefore that the concessionaire has the incentives only to allocate one area to one and the same concessionaire. Conversely, it would choose the most efficient concessionaire through the bid.
60. With respect to possible co-ordination of Areamed and Autogrill, as noted above, Areamed is managed by Areas, a company independent from New Abertis and with its own commercial interests. Therefore, it is expected that New Abertis and Edizione Holding will have limited access to information regarding Areamed's day-to-day business conduct. On the other side, New Abertis and Areamed will not have privileged access to Autogrill's strategic decisions.
61. As regards the bid levels, any risk of coordination is to be excluded given that Abertis' business strategy in the management of its participation in the shareholding of Areamed has been so far rather conservative and not aimed at expanding Areamed's activities outside Spain, outside the part of the Spanish motorway currently managed by Abertis or even, within the latter, outside the part of the network previously managed by Acesa. In particular, Areamed has never participated to any bid and will never bid on its own. Moreover, any possible coordination regarding the submission of bids is not likely to extent to Areas, which so far has been a very credible competitor to Autogrill.
62. Finally, considering the indirect nature of Edizione Holding/Autogrill's structural link with Areamed, it does not seem plausible that, after the merger, Edizione Holding will have any real incentive in favouring Areamed, given its limited shareholding in New Abertis and, consequently, very limited shareholding in Areamed.

#### *Italy*

63. As regards Italy, Autogrill has a very strong position (with a market share in the range of [60-70]%). However the proposed transaction does not change the competitive conditions of this market given that Autogrill's dominant position pre-existed to the merger<sup>(24)</sup> and is not strengthened by the current transaction by an increment of market shares or by the elimination of an actual or potential competitive constraint to Autogrill. Areamed is not present at all in Italy and there are no grounds to believe that it is a likely new entrant in this market in the future. As stated above, Areamed's business conduct has been conservative and according to the parties, it has not submitted bids for any other concession foodservices since it was created.

#### *France*

64. In France the transaction would create a vertical link between Autogrill and Sanef (a motorway concessionaire currently controlled by the Abertis group). However, since Areamed is not active in the French market, the operation does not create any horizontal

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<sup>24</sup> This was already acknowledged by the Italian Competition Authority C 3818 Edizione Holding/Autostrade.

overlap, nor does it appear to eliminate a likely potential entrant in this market. Autogrill's position in France is more limited, with a market share of [25-35]% in the narrower market for concession foodservices on toll motorways ([10-15]% on the basis of number of outlets). A few respondents to the market investigation expressed the concern that post-merger, New Abertis could favour Autogrill in tender for sub-concessions of foodservices. However, as stated above, Edizione Holding will not control New Abertis. This limits the possibilities of Edizione Holding being able to exercise decisive influence on its business conducts so as to favour Autogrill in the tenders, given that, as previously explained, the other shareholders of New Abertis do not have any possibilities to recoup the profits lost by New Abertis through Autogrill.

65. Therefore, given the structure of the market for the sub-concession of foodservices and the divergent interests of the players, there are no grounds to believe that post-merger the New Abertis will favour Autogrill.
66. Moreover, it appears unlikely that the transaction could give rise to coordinated effects, notably between Autogrill and Areamed. As explained, the structural link created by the merger would not permit a bilateral flow of information and would not create a lack of competition neither at the retail level, given that there is already pre-merger no competitive constraint between Areamed and Autogrill since their activities do not overlap. Similarly the risk of coordination between the two companies at the bidding level may be excluded given that Areamed did not bid on its own or has ever intended to do so.
67. Thus it can be concluded that as regards the market for concession foodservices, the transaction does not lead to serious doubts as to its compatibility with the common market or a substantial part of it.

*b) Telecommunication services*

68. Autostrade has very limited activities in this sector mainly managing of sites for telecommunication operators on its own road segments. Abertis is mainly active in the dark fibres segment in Spain with a market share of [20-30]%. However, the parties submit that in light of the limited geographic scope of these activities, it seems unlikely that the concentration would have any influence on this market
69. One of the respondents to the market investigation raised a concern as regards the market for the provision of electronic toll collection (ETC) services by means of transponder devices. According to this competitor, highway operators can also issue transponders to their clients. This, according to the competitor, would be the case of Autostrade which owns Telepass (an ETC system) in Italy whereas La Caixa (one of Abertis' shareholders) seems to be an issuer of transponders.
70. For the ETC market, the respondent considers that the operation could raise concerns in terms of (i) access of other motorway operators to use of transponders or (ii) the merged entity entering into interoperability arrangements which could not be open and equal to those provided to other transponder operators (for the use of the transponder in a given motorway).
71. For the motorway concession market, the respondent raised a "preferential-access argument", i.e. the merged entity could be bidding for new concessions having access to lower toll collection fees than those offered by ETC systems (such as Telepass or other systems) to other competitors.

72. The parties have highlighted that Telepass was implemented in 1990, and at that time there were no European ETC standards. Therefore the Telepass system was built in conformity with the Italian UNI standards, different from the EU standards (TC 278), approved later on. As regards Abertis, the parties confirmed that neither it nor its shareholders are active in the development or the supply of equipment or software for ETC systems. La Caixa offers, like 120 banks in Spain, transponders supplied by third parties.
73. As regards the access of other motorway operators to use of transponders, the parties have indicated that motorway operators using ETC systems based on the TC 278 standards procure their transponders from several independent companies. It appears therefore that the merger will not create access problems.
74. With respect to the restrictions derived from interoperability arrangements, the European Regulation<sup>25</sup> obliges Member States to adopt the necessary legislative measures to require toll operators to provide an interoperable electronic toll service in all the EU countries.
75. With reference to the "preferential-access argument", the parties have indicated that such advantage would be irrelevant, as it would represent less than [0-5]% of the overall concession investment. Moreover, the merged entity would enjoy such an advantage only where the awarding authority decided to use Telepass. However, this is not possible at the moment. In fact, new concessions that are currently under a bidding process in different EU countries request for multi-provider open systems.

## CONCLUSION

76. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
signed  
Neelie KROES  
Member of the Commission

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<sup>25</sup> European Directive 2004/52/EC of 29 April 2004.