

***Case No COMP/M.5974 -
FINAVIAS/ ABERTIS/
AUTOPISTA TRADOS
M-45***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/10/2010

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EUROPEAN COMMISSION

Brussels, 25.10.2010

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5974 - Finavias/ Abertis/ Autopista Trados M-45
Notification of 23 September 2010 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 23 September 2010, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which the undertakings Finavias S.à.r.l. ('Finavias', Luxembourg), controlled by AXA Infrastructure Managers Private Equity ('AXA Private Equity', France), itself belonging to the AXA group ('AXA', France) and Abertis Infraestructuras S.A. ('Abertis', Spain) acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of Autopista Trados M-45 S.A. ('Trados M-45', Spain) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified 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.

I. THE PARTIES

3. **Finavias** is active in private equity and asset management. It is controlled by AXA Private Equity, the "risk capital" pole of the asset management business of AXA. AXA

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

Private Equity invests in non-listed companies or investment funds worldwide. AXA is an international group active in the provision of life and non-life insurance and related financial services.

4. **Abertis** manages transport and telecommunication infrastructure networks, including toll motorways, airports, car parks, logistics parks and broadcast networks. It operates primarily in Europe and South America.
5. **Trados M-45** is in charge of managing a toll road serving the metropolitan area of Madrid. It is currently jointly owned by Abertis and Cintra. Cintra belongs to the Ferrovial Group.

II. THE TRANSACTION AND CONCENTRATION

6. The proposed transaction concerns the acquisition of joint control over Trados M-45 by Finavias and Abertis.
7. According to the Share and Purchase Agreement of 20 July 2010, Finavias will acquire Cintra's 50% stake in Trados M-45. After the transaction, Finavias and Abertis will have joint control over the target, with each having 50% of shares and of the voting rights. All decisions taken by the Board of Directors are to be adopted by unanimity, including the decisions regarding the budget and the business plan of Trados M-45.
8. The notified transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

9. In 2009, the undertakings concerned had a combined aggregate world-wide turnover of more than EUR 5 000 million² (EUR 90,124 million for AXA group, EUR 3,935 million for Abertis and EUR 26 million for Trados M-45). Two of the undertakings concerned had an EU-wide turnover in excess of EUR 250 million (EUR 60,862 million for AXA Group and EUR 3,677 million for Abertis), but they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified transaction therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

1. Market definition

10. The notifying parties submit by referring to previous Commission decisions³ that the markets concerned by the proposed transaction are support activities for transportation, namely: (i) the market for granting of toll motorway concessions, (ii) the market for transport on toll motorways, (iii) the market for infrastructure constructions, and (iv) the market for ancillary services to the operation of toll motorways facilities.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ Case No. COMP/M.4249 – Abertis/Autostrade, para 14 and subseq. and Case No. COMP/M. 4087 – Eiffage/Macquarie/APRR, para 25.

11. The only product market where the AXA Group (via AXA Private Equity's shareholdings), Abertis and Trados M-45 are all present is the market for the granting of toll motorway concessions and, consequently, the market for transport on toll motorways. While the two above markets might seem closely related, the Commission has held that the grant of a license for the exploitation of a particular State-regulated activity is distinguishable from the running of that particular activity.⁴ However, the Commission has left open the exact product market definition.⁵ The next subsections will deal with the assessment of these two markets.
12. As there are no overlaps between the notifying parties' activities in either the market for infrastructure constructions or in the market for ancillary services to the operation of toll motorway facilities, these are not subject to further assessment.

1.1. The market for granting of toll motorway concessions

Product market definition

13. The notifying parties define the market for granting of toll motorway concessions as the economic activity where supply is represented by the Public Administration and demand by undertakings or consortia of undertakings with an interest in acquiring toll motorway concessions, as suggested by Commission's previous decisions.⁶ In its practice, the Commission considered the possibility to distinguish the market for the granting of toll motorway concessions from the market for the transport on toll motorways. For the purpose of the present case the exact product market definition of the granting of toll motorway concessions can be left open since the appraisal of the transaction will not be altered under any alternative product market definition considered.

Geographic market definition

14. In the Commission decisional practice, while the results of the market investigation pointed to an at least EEA-wide relevant geographic market for the granting of toll motorway concessions, the exact definition of the relevant geographic market was left open, giving the possibility for a delineation of a national market.⁷
15. The notifying parties consider in their submission both EEA-wide and nation-wide geographic market definitions. They submit that the transaction does not raise any competition concerns irrespective of the geographic market definition.
16. The relevant geographical markets for the granting of toll motorway concessions can be left open in this case, since the transaction does not raise any competition concerns irrespective of the geographic market definition.

1.2. The market for transport on toll motorways

17. The notifying parties submit that the market for transport on toll motorways consists of the activity of operating toll motorways. This is in line with the previous definition by

⁴ Case COMP/M.4087 Eiffage Macquarie/APRR, para 9-10.

⁵ Case No COMP/M.4087 Eiffage/Macquarie/APRR, para 15-16.

⁶ Case COMP/M.4687 Sacyr/Eiffage, para 26 and Case COMP/M.4249 Abertis/Autostrade, para 15.

⁷ Case No. COMP/M.4249 – Abertis/Autostrade, para 17.

the Commission as the provision of speedy and secure road transport infrastructure between various geographical points ('Origin&Destination routes'), whereby every combination of a point of origin and a point of destination is considered a separate market from the demand side.⁸

18. For the purposes of the present case, the exact geographic market definition can be left open since the appraisal of the transaction will not be altered under any alternative definitions of possible origins and destinations considered. Because the activities of the notifying parties do not overlap on any meaningful route⁹, the market for transport on toll motorways is not further assessed below.

2. Assessment

19. Trados M-45 is in charge of managing one of three sections of the M-45 motorway in the Madrid metropolitan area (namely Stretch 2). The section is a 14.5 km long high capacity congestion relief road built in the early 2000s by the Regional Government. Trados M-45's operations mainly consist of maintenance and, from time to time, investment in the road, as well as making sure that the road remains open to traffic (in case of accidents, etc).¹⁰ The concession runs until 2029.
20. AXA Group's only involvement in the market for the granting of toll motorway concessions is linked to AXA Private Equity's shareholding in Alicorne. Amongst many other activities, AXA Group has interests in the airport ground support business.
21. Abertis is active in the market for the granting of toll motorway concessions in Europe and in particular in France through Sanef and its subsidiaries and in Spain through numerous direct and indirect participations. Abertis' other business activities include airport management.

2.1 The market for granting of toll motorway concessions

22. Considering the EEA market for the granting of toll motorway concessions, the proposed transaction would not lead to a combined market share of 15% or more under any alternative market definition.
23. Considering the market for granting of toll motorway concessions on a national level, Trados M-45 is only active in Spain whereas AXA Group and Abertis have overlapping activities in France.

⁸ Case No. COMP/M. 4687 – Sacyr/Eiffage, para 28 and Case No. COMP/M.4087 EiffageMacquarie/APRR, para 19.

⁹ The parties submit that Abertis' motorway network (covering much of Northern France) is not a substitute of the 45km stretch of the A88 motorway (in the Basse Normandie region connecting Falaise and Sées), over which AXA Group has joint control through its subsidiary Alicorne. According to the estimates offered by the notifying parties, the Abertis network is not a plausible alternative for users of Alicorne's A88 due to the increased time and cost associated with using the Abertis network. Itineraries provided by the motorways concerned appear therefore distinct.

¹⁰ The operations and maintenance functions are not performed directly by Trados M-45, but by M-45 Conservacion, which is a 50-50% joint venture with Concesiones de Madrid, which manages another section of the M-45 motorway.

24. In Spain, the acquisition by AXA Group of joint control of Trados M-45 would have no impact, as AXA Group is not active in this market and Abertis is already jointly controlling Trados M-45.
25. In France (the only relevant geographic market where the AXA Group is active), AXA Group and Abertis are both active in the market for granting of toll motorway concessions with respective market shares of [0-5]% and [10-20]% in value and [0-5]% and [20-30]% in volume. While Abertis controls Sanef ('Société des Autoroutes du Nord et de l'Est de la France'), AXA has a controlling shareholding in Alicorne, the operator of A88 toll motorway in France.
26. In light of the small presence of AXA Group in the market for the granting of toll motorway concessions under any geographic market definition, the Commission concludes that the concentration will not lead to a significant impediment of competition in this market.

2.2. Cooperative effects at parents' level

27. Nevertheless, as both parents are active in a market on which the joint venture is not active, the competitive assessment evaluates the existence of cooperative effects at parents' level.
28. The notifying parties submit that there is no risk of coordination between AXA Group and Abertis due to a number of factors such as: (i) the very limited geographic overlap of activities between the parties; (ii) the lack of incentive to coordinate due to the marginal share of the joint venture in the revenue of the parents; (iii) the fact that the market for the granting of motorway concessions is a bidding market with infrequent bids; and (iv) the fact that the client (i.e. the public administration) has a strong bargaining power.
29. In the Commission's view, the absence of risk of coordination between the notifying parties in the market for the granting of toll motorway concessions is based on the following considerations. To begin with, there is a lack of incentive to coordinate due to the small size of Trados in comparison with Abertis and AXA Group¹¹. In addition, there are significant competitors in the market for the granting of toll motorway concessions in the EEA, in Spain and in France. In the latter Member State, significant competitors include companies such as Vinci (with 49% market share in volume and 54% market share in value) and Eiffage (with 26% estimated market share in volume and 23% market share in value). Their presence considerably reduces the potential gains of coordination between the parties. Moreover, while Abertis is likely to respond to calls for tenders concerning other concessions, AXA Group should be considered merely as a potential competitor.¹²
30. In addition, the competitive assessment considers the vertical relationship between the parents in the airport business sector. Abertis is active in the airport management

¹¹ Trados M-45 had revenues of EUR 26 million in 2009, as compared to EUR 90,124 million for the AXA Group and EUR 3,935 million for Abertis, which is less than 1% of the turnover of either the AXA Group or Abertis.

¹² Cf. the fact that Alicorne is limited to the operation of the A88 toll motorway and is prevented by its by-laws from responding to calls for tenders for other concessions.

business, whereas AXA has a controlling interest in TLD, a French company specialised in airport ground support equipment, such as passengers steps, air starters, belt loaders.

31. The notifying parties claim there is no risk of coordination between the Abertis' airport management businesses and TLD.
32. Based on the information provided by the notifying parties, the Commission observes that TLD does not usually have direct links with the airport management market. TLD provides airport ground support equipment, while its customers are mainly ground handlers, airline companies or leasing operators, and not airport management companies. Hence, the transaction does not pose any risk of coordination of competitive behaviour between the parents in the airport business sector.
33. Based on the above arguments, the Commission concludes that coordination that would restrict competition between the parents within the meaning of Article 101(1) of the TFEU is highly unlikely and that the possibility of spill-over effects in the meaning of Article 2(4) of the Merger Regulation as a result of the proposed transaction can be discarded.

IV. CONCLUSION

34. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission