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***Case No COMP/M.6150 -  
VEOLIA TRANSPORT /  
TRENITALIA / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 20/07/2011

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## EUROPEAN COMMISSION

Brussels, 20.07.2011

C(2011) 5374

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M. M.6150 VEOLIA TRANSPORT / TRENITALIA / JV  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 16 June 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Trenitalia S.p.A. ('Trenitalia', Italy), a fully owned subsidiary of Ferrovie dello Stato S.p.A. ('FS', Italy), and Veolia Transport Rail S.A.S. ('Veolia Transport Rail', France), a fully owned subsidiary of Veolia Transdev (France), which is itself a joint subsidiary of Veolia Environnement ('VE', France) and Caisse des Dépôts et Consignations ('CDC', France), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of an undertaking (the 'joint venture company', France) by way of purchase of shares<sup>2</sup> (Trenitalia and Veolia Transport Rail are designated hereinafter as the 'notifying parties').

#### **I. THE PARTIES**

2. **Trenitalia** is a railway undertaking active in international, long distance and local passenger transport and in freight transport, belonging to the FS group.
3. **FS** is the holding company of the FS group resulting from the transformation of the former rail administrator. It is owned by the Italian Ministry of Finance. Apart from Trenitalia, the FS group comprises several other companies including Rete Ferroviaria Italiana SpA ('RFI'), the manager of the Italian national rail infrastructure, which

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1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). 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.

2 Publication in the Official Journal of the European Union No C 182, 23.06.2011, p.29

operates the network infrastructure on the basis of a 60-year management contract granted by the Transport Minister on 31 October 2000<sup>3</sup>.

4. **Veolia Transport Rail** is the holding company for rail business lines of Veolia Transport S.A. ('Veolia Transport'), which provides public passenger transport services and delegated international management of local, regional and national transport networks involving all types of vehicles (bus, train, underground train, tram, etc.)<sup>4</sup>.
5. **VE** is an international group active in (i) delegated management of water and sanitation services, (ii) provision of cleaning and waste treatment services, (iii) provision of energy services and (iv) delegated management of transport services.
6. **CDC** is a public corporation responsible for tasks of general interest consisting of (i) managing private funds for which public authorities wish to provide special protection, and (ii) lending or investing in activities for the public interest. CDC is thus active in the fields of personal insurance, transport, real estate and the development of companies and services.
7. **The joint venture company** will be the exclusive vehicle for the notifying parties' operation of international passenger rail transport services on the following routes: Paris-Rome and Paris-Venice (night services – as of December 2011), Turin-Lyon (conventional day services – [...]), Paris-Milan and [...]. The joint venture company will also be active in the market for the award of rail services franchises and concessions in the United Kingdom.

## II. THE TRANSACTION

8. The transaction consists in the creation by Trenitalia and Veolia Transport of a joint venture company. To this end, they will use an existing shell company currently fully owned by Veolia Transport. Veolia Transport will sell 50% of the shares of the shell company to Trenitalia. The joint venture company will thus be jointly owned on a 50/50 basis by Trenitalia and Veolia Transport.
9. The transaction will coincide with the termination of the current Artesia cooperation between Trenitalia and SNCF. Trenitalia and SNCF, through Artesia<sup>5</sup>, are currently the only providers of direct international rail passenger services between Italy and France. They currently propose two night return services on the Paris-Rome and Paris-Venice routes with conventional rolling stock, and three day return high-speed services between Paris and Milan.

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3 RFI sets train paths and provides signalling, maintenance and other services for the railway network.

4 The Commission analysed the concentration whereby the VE and CDC merged their transport subsidiaries (Veolia Transport and Transdev respectively) to create a new entity, Veolia Transdev. The transaction was partially cleared by the Commission as regards the EEA component of the merger, particularly with regard to scheduled international passenger transport by coach, and partially referred to France and the Netherlands. Following the referrals, the transaction was cleared by each of the respective NCAs (see Decision No 6957/202\_A of the Nederlandse Mededingingsautoriteit of 9 December 2010 concerning Case 6957/Veolia-CDC-Transdev and Decision of the Autorité de la Concurrence n° 10-DCC-198 of 30 December 2010).

5 Artesia is a joint venture set up in 1999 by SNCF and Trenitalia with the task of supporting the two mother companies in organizing and commercializing their international passenger transport services between France and Italy. Artesia is not itself a railway undertaking, the two parent companies acting as "consecutive carriers" on the routes concerned.

10. In July 2010, Trenitalia and SNCF signed an agreement concerning the termination of the Artesia cooperation by December 2011. It appears from the information provided by the parties that, also absent the transaction, Trenitalia would in any event have terminated the Artesia cooperation<sup>6</sup> .

#### *Joint control*

11. Pursuant to a Term Sheet of 1 October 2010 and the Shareholders' Agreement of 14 January 2011, amended on 2 May 2011, Trenitalia and Veolia Transport will own an equal number of shares and corresponding voting rights in the joint venture company. Moreover, they will alternate the designation of the top management and will jointly approve the appointment of other key managers of the joint venture company. In addition, unanimity will be required for certain significant decisions including any change to the business plan, and approvals or modifications of the annual budget. Therefore Trenitalia and Veolia Transport will have joint control over the joint venture company.

#### *Full functionality of the joint venture company*

12. Pursuant to the Shareholders' Agreement, the joint venture company will have its own dedicated management team (comprising a CEO, a CFO and the Chairman of the board as well as other key managers reporting directly to the CEO). It will have its own staff necessary to run its services including train drivers, technicians, and stewardesses.
13. The joint venture company will have its own market presence as it will commercialize its services to third party customers under its own trademark and will be provided with the necessary means and authorisations to operate international rail services. Moreover, it will source its supplies at market conditions both from its parents and other suppliers. The joint venture company will operate on a lasting basis. It is established for an unlimited duration and the notifying parties will not withdraw from it for at least five years.
14. The notified transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **III. EU DIMENSION**

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>7</sup> (EUR 9.6 billion for FS, EUR 8.4 billion for CDC and EUR 33.2 billion for VE). Each of them has an EU-wide turnover in excess of EUR 250 million (EUR [...] for FS, EUR [...] for CDC and EUR [...] for VE), but there is no Member State where each of them would achieve more than two-thirds of its aggregate EU-wide turnover.
16. The transaction therefore has an EU dimension pursuant to Art 1(2) of the Merger Regulation.

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<sup>6</sup> Para 247 of the Form CO and internal documents of Trenitalia.

<sup>7</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

#### **IV. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

17. The joint venture company will be active on the market for scheduled international passenger rail transport services on the relevant routes<sup>8</sup>, and on the market for the award of franchises and concessions to operate passenger rail services in the United Kingdom.<sup>9</sup>
18. FS is present on the market of access to railway infrastructure (through RFI) and on the market of traction services (through Trenitalia). These two markets are upstream markets in relation to the market for scheduled international passenger rail transport services.

##### **IV.1 The market for scheduled international passenger transport services**

###### *Point of origin/point of destination (O&D) approach*

19. In line with its practice in other transport sectors such as air<sup>10</sup>, coach<sup>11</sup> and ferry services<sup>12</sup>, the Commission has in previous decisions relating to international rail passenger transport services identified the relevant markets as those for point-to-point travel on the routes concerned.<sup>13</sup> This market definition corresponds to the demand-side perspective whereby passengers usually do not readily substitute destinations. On this basis, every combination of a point of origin and a point of destination ("O&D pair") is considered to be a separate market.
20. The notifying parties submit that in the present case, the relevant markets are created by the O&D points at the ends of each route (i.e. [...], Lyon-Turin, Paris-Milan, Paris-Rome and Paris-Venice). In addition, the notifying parties submit that the real commercial focus of the planned services is between the ends of each of the five contemplated routes, suggesting that intermediary stops should not be analysed as separate markets.
21. The results of the market investigation broadly confirmed the pertinence of the O&D approach for the purposes of defining the relevant markets in this case, as shown by the majority of replies from both competitors and customers. Among competitors, one railway undertaking pointed out the necessity in some instances to include catchment areas at the point of origin or destination whereas another one pointed to the importance of intermediary stops for the economic viability of international routes. However, these remarks do not fundamentally call into question the validity of the O&D approach from a consumer perspective. The O&D approach reflects the behaviour of passengers who may

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8 With intermediary stops foreseen on each of these routes.

9 None of the parties currently operates in this market in the UK. The transaction will not lead to any reportable markets in the UK. Furthermore, neither VE/CDC nor FS operates on a market which is either upstream or downstream of the passenger rail services in the UK. For these reasons, the current decision does not further investigate this market.

10 Case COMP/M.3770 Lufthansa/Swiss, para 14; Case COMP/M.5403 Lufthansa/BMI, para 8; Case COMP/M.5335 Lufthansa/SN Airholding (Brussels Airlines), para 12; Case COMP/5440 Lufthansa/Austrian Airlines, para 11.

11 Case COMP/M.5741 CDC/Veolia Environnement/Transdev/Veolia Transport, para 16.

12 Case COMP/M.4206 Volia-BCP/SNCM, para 18.

13 Case COMP/M.5655 SNCF/LCR/Eurostar, para 15 et seq., case n°IV/M.1305 Eurostar, para 22, Antitrust case n°COMP/37.685 GVG/FS, para 59 et seq., Judgement of the Court Instance in joined cases T-374/94, T-375/94, T-384/94 and T-388/94, European Night Services and others v Commission, para 91 et seq.

consider different possible transportation solutions to go from a given point of origin to a given point of destination but generally do not envisage other O&D pairs as possible alternatives.

22. For the purpose of the present decision, and in line with the Commission's O&D approach, every combination of a point of origin and a point of destination on the relevant routes (account being taken of intermediary stops) shall constitute a relevant market.

#### *Time-sensitive vs. non-time-sensitive passengers*

23. In its previous practice regarding passengers transport, including rail transport<sup>14</sup>, the Commission considered distinguishing between 'time-sensitive' (or non-price-sensitive) passengers and 'non-time-sensitive' (more price-sensitive) passengers. The basis for this distinction is that 'time-sensitive' passengers are ready to pay a relatively high price in exchange for speed and flexibility, as well as higher standards of comfort and other facilities whereas 'non-time-sensitive' passengers are prepared to give up some of this flexibility and accept lower standards of comfort in return for a lower price. However, the Commission has not always taken a firm position on this distinction, the relevance of which appears to depend to a large extent on the particulars of the markets concerned.
24. The notifying parties submit that the market for scheduled international passenger transport services on a given route can indeed be further segmented into services for time-sensitive and non-time-sensitive passengers.
25. For the purpose of the present decision, it is not necessary to determine whether separate markets for time-sensitive and non-time-sensitive passengers should be distinguished, as this conclusion would not alter the assessment of the case at hand.

#### *Intermodal competition*

26. As it results from previous Commission decisions, in the case of passenger transport, it must also be considered to what extent the different modes of transport are substitutable, in particular in the eyes of customers. Under certain conditions passengers may consider that air travel might be substitutable to rail travel, depending on the characteristics of the services such as prices and travelling time<sup>15</sup>.
27. The notifying parties consider that air services may constitute a valid alternative to train services, depending on the offer of air services available and on the time and price sensitivity of the passengers.
28. The notifying parties consider that for time sensitive passengers, intermodal substitutability is very limited. They note however that air services may constitute a credible alternative to train services in particular with respect to short-haul flights, provided that there exists an airport nearby the point of origin and destination and provided that there are direct flights available. The notifying parties consider in addition that air and rail services can only be considered as substitutable if the difference in travelling time and price between the two modes of transport remains reasonable.

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14 Case COMP/M.5655 SNCF/LCR/Eurostar, para 19 and 20., case n°IV/M.1305 Eurostar, para 14 et seq.

15 Veolia Transport is active through Eurolines in the international passenger coach services sector between Italy and France, Italy and Belgium, and Italy and the Netherlands. The notifying parties consider that coach is unlikely to be substitutable to train transport and therefore, do not propose to include it in the relevant markets. Considering the very small number of passengers on coaches operated by pools to which Eurolines belongs on the routes at stake, the inclusion of coach services would not affect the outcome of the competition analysis.

29. The market investigation showed that, in line with the Commission's findings in past decisions, the question whether different modes of transport are substitutable in the eyes of customers, will depend on the characteristics of the services such as price, travel time, number of changes, and convenience of schedules.
30. The market investigation did not yield univocal results in this respect. However, a majority of respondents indicated that on the Paris-Milan, Paris-Rome and Paris-Venice routes, air transport is considered a valid alternative to rail transport and exerts at least some competitive pressure on train services. According to certain respondents, airlines have decreased their prices so that airline tickets are available at prices similar to or even below prices for rail tickets.
31. The notifying parties provided indications which tend to confirm that Trenitalia and SNCF take airfares into consideration in the setting of their own fares. They indicated that Trenitalia and SNCF had been monitoring airfares on the Paris-Milan, Paris-Rome and Paris-Venice routes and took them into account when setting their own fares and frequencies, in particularly following the launch of low cost air services in 2003-2004.
32. These various elements tend to indicate that air services might exert competitive pressure on train services, in that a small and non-transitory increase in train fares may induce a significant number of passengers to switch from train to air services. However, the opposite does not necessarily appear to be true for these routes given the long distance and corresponding travel time (clearly exceeding 3 hours by train). Besides, the replies to the market investigation indicate that airlines do not take into account train fares when establishing their own fares for these routes.
33. However, there are also indications from the market investigation that certain travellers, when choosing for rail transport, do so for a number of non-price related reasons, such as the fear of flying, the possibility of unlimited passenger baggage, or the possibility to travel in large organised groups.
34. For the purpose of the present decision, it is not necessary to determine whether the relevant markets on the routes concerned comprise other modes of transport or not since this would not alter the outcome of the competitive analysis.

#### *Indirect rail passenger transport*

35. Although it is possible to travel by rail from Paris to Rome, Milan or Venice via Switzerland, the majority of replies to the market investigation indicated that these indirect services do not constitute a credible alternative to direct trains on the route concerned, in particular in view of the overall travel time of these indirect services and the fact that they involve at least one connection.

#### *Conclusion*

36. For the above reasons, it can be concluded that for the purposes of the present case, the relevant product and geographic markets may be defined as international passenger transport services for each O&D pair on the relevant routes. It may be left open whether these relevant markets should also include other modes of transport (in particular air services), or be further sub-divided in markets for time-sensitive and non-time-sensitive passengers. However, it can be concluded that these markets do not comprise indirect train services via Switzerland.

## **IV.2 The market for access to railway infrastructure**

37. The joint venture company will need to be provided access to the Italian railway network for the routes with a point of origin or destination in Italy (specifically Rome, and Venice). RFI, part of the FS group to which Trenitalia belongs, is the infrastructure manager in Italy, having a legal monopoly. In particular, RFI is responsible for the allocation of train paths<sup>16</sup> to railway undertakings.
38. In line with Commission practice and the case law of the European Courts<sup>17</sup> according to which there is a "market for access and management of railway infrastructure, controlled by infrastructure managers within the meaning of Directive 91/440", the notifying parties consider that there is a distinct market for access to and management of the railway infrastructure. This market comprises the services listed in point 1 and 2 of Annex II of Directive 2001/14/EC<sup>18</sup>, which the infrastructure manager is obliged to provide upon request, on a non-discriminatory basis, that is to say (i) the minimum access package<sup>19</sup> and (ii) the track access to services facilities and supply of services, as implemented in the domestic legislation (for the case of Italy, Legislative Decree No. 188/200320).
39. In the notifying parties' view, the geographically relevant markets are the intercity railway paths in Italy which are connected to the French railway network and which will allow the joint venture company to run its trains from the French border to the points of destination in Italy.
40. For the purpose of the present decision, it is not necessary to determine the exact product and geographic market definition for access to railway infrastructure, as the transaction does not raise competition concerns under any conceivable market definition.

## **IV.3 The market for the traction for scheduled passenger services**

41. A railway undertaking performing conventional passenger services needs traction, i.e. a locomotive and a driver.<sup>21</sup> Trenitalia provides traction to foreign railway undertakings performing conventional passenger services to/per Italy.

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16 A train path is defined as the infrastructure capacity needed to run a train between two places over a given time-period (see Article 2.1) of Directive 2001/14/EC of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 75, 15.3.2001, p. 29).

17 Joined case T-374/94, T-375/94, T-384/94 and T-388/94 of 15 September 1998, ENS, Eurostar, UIC, NS and SNCF v. Commission, para. 220.

18 Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, OJ L 75, 15.3.2001, p. 29–46.

19 According to Directive 2001/14/EC, the minimum access package includes the following services: a) handling of requests for infrastructure capacity; b) the right to utilise capacity which is granted; c) use of running track points and junctions; d) train control including signalling, regulation, dispatching and the communication and provision of information on train movement; e) all other information required to implement or operate the service for which capacity has been granted.

20 These services comprise notably access to refuelling facilities, freight terminals, marshalling yards and train formation facilities, areas, installation and buildings dedicated to parking and storage of rolling stock and goods, maintenance and other technical facilities (see Article 20 (2) of Legislative Decree No 188/2003).

21 This is not the case for high-speed trains, which are blocked trains, with the locomotion section being an integral part of the train.



42. In its previous practice, the Commission has defined traction as the provision of a locomotive and a driver and considered the traction market as distinct from the market for the renting or purchasing of locomotives.<sup>22</sup>
43. In line with the Commission's practice, the notifying parties submit that there is a specific market for the traction of scheduled passenger trains.
44. In its antitrust decision *GVG/FS*<sup>23</sup>, which analysed the traction market between Milan and Basel through Domodossola, the Commission considered that the relevant geographic market<sup>24</sup> was confined to the region of Milan because in the event of a technical failure, a traction provider needs to be able to call upon a pool of locomotives at reasonably short notice, which means that the pool had to be reasonably close to the Milan-Domodossola route.
45. The notifying parties submit that the scope of the geographic market concerned in this case is national (Italy). They indicate that traction service providers are not confined in any specific routes but can offer their services for traction on new routes, depending on the need of potential clients.
46. The market investigation confirmed the existence of a market for the provision of external traction services for passenger rail services in Italy. Nevertheless, one provider of traction services pointed to the fact that, from a practical point of view, it is preferable for a traction provider to be located in the region of the terminal station or interchange point.
47. For the purpose of the present decision, given that the transaction does not raise competition concerns under any conceivable market definition, it is not necessary to determine the exact product and geographic market definition for traction services.

## V. COMPETITIVE ASSESSMENT

### V.1 The routes

[...]

48. [...]

*Paris-Milan (high speed)*

49. The transaction will not give rise to any horizontal overlaps between the notifying parties since Veolia Transport Rail does not operate the Paris-Milan route.
50. The notifying parties do not consider launching high speed services on the Paris-Milan route before [...]. This time-span is necessary to make available to the joint venture company high speed rolling stock homologated in France.<sup>25</sup>

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22 Decision in Case COMP/M.37.685 GVG/FS.

23 See paragraph 58.

24 Which, according to that decision, cannot be wider than national in any event given the national technical standards and the special driver qualifications/training required to drive on the national railway network.

25 For the time being, Trenitalia does not have high speed rolling stock homologated in France. In the context of the current Artesia cooperation, high speed rolling stock is provided by SNCF for the Paris-Milan day services whereas night coaches are provided by Trenitalia for the Paris-Venice and Paris-Rome night services.

51. Therefore, services on the Paris-Milan route appear to be envisaged for a relatively remote future and their effective launch may for that reason be contingent upon a number of technical, administrative or market-related factors. In addition, the Commission considers it likely that high speed services would continue to be operated on this route by SNCF. Moreover, SNCF has already made the first steps in order to continue its services on the day trains by requesting paths and homologation for its rolling stock in Italy. Furthermore, the CEO of SNCF declared that "We will continue our own services [...] There will be two services, but the market deserves this".<sup>26</sup> Finally, with more than 100 000 passengers / year, the market appears large enough to support more than one carrier. The parties themselves consider that there would be room for 2 to 3 rail operators on the route.
52. Besides, the transaction is unlikely to have any merger specific vertical effect on this route. Indeed, the transaction does not change FS' ability and incentive to foreclose access to the Italian section of this route. In particular, RFI is already vertically integrated within FS, and Veolia Transport Rail will likely enter in this market with Trenitalia only as of [...] SNCF is likely to continue to operate on this route despite some non-merger specific issues (like the long homologation process in Italy of SNCF high speed trains or the access to fully adequate paths)<sup>27</sup>.
53. Since this transaction does not give rise to any competition concerns on that route, the latter will not be further considered in this assessment.

#### *Turin-Lyon (conventional day services)*

54. None of the parties is currently active on this route<sup>28</sup>. Conventional day services on the Turin-Lyon route are expected to be launched in the course [...]. Furthermore, no competing direct service is provided on this route. There is no tangible indication at this stage that absent the transaction, any operator other than Trenitalia would offer services on this route after the termination of the Artesia cooperation. Since this transaction does not give rise to any competition concerns on that route, the latter will not be further considered in this assessment.

#### *Paris-Rome and Paris-Venice (night trains)*

55. The night services on the Paris-Rome and Paris-Venice routes are intended to be launched by December 2011. These two routes are subject to the analyses below.

### **V.2 No horizontal overlaps**

56. The transaction will not give rise to any horizontal overlaps between the notifying parties' activities related to the international rail passenger transport on the Paris-Venice and Paris-Rome routes since Veolia Transport Rail does not operate any of the routes concerned.

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<sup>26</sup> L'Echo touristique of 17 February 2011.

<sup>27</sup> Non-confidential minutes of the conference call with SNCF dated 10 May 2011.

<sup>28</sup> Currently, only an Artesia service on Paris-Milan stops at the Lyon airport (St Exupéry). This is not the same service as Turin-Lyon, as the Lyon stop is located remote from the city centre (around 30 km from Lyon city centre). SNCF considered that the service contemplated by the joint venture would compete with regional trains operating in Rhone-Alpes region (non confidential minutes of conference call of 10 May 2010). Even if the Artesia service were to be considered as belonging to the same market as Turin-Lyon, the transaction would not give rise to any competition concerns on that route.

57. Moreover, based on the information provided by the parties<sup>29</sup> the Commission considers it very unlikely that Veolia Transport Rail would operate any of the routes in competition with Trenitalia absent the transaction.

### **V.3 Vertical foreclosure scenarios**

58. Given the relationship between Trenitalia and the role of its parent FS through its affiliate RFI, it would in principle be necessary to assess whether the transaction creates or strengthens the ability or incentives for Trenitalia/FS to foreclose access to rail infrastructure or traction services<sup>30</sup>, in order to prevent potential competitors from launching international services on the Paris-Rome and Paris-Venice routes.

59. However, as mentioned before, absent the transaction, it appears that Trenitalia would in any event have terminated the Artesia cooperation. Moreover, it is very unlikely that, absent the transaction, Trenitalia would stop offering services on the Paris-Rome and Paris-Venice routes because on the one hand Trenitalia already has in particular the necessary know-how and rolling-stock for the night trains on these two routes, and on the other hand, according to the notifying parties, the night services business between Italy and France is profitable.

60. Given that, absent the transaction, Trenitalia would most likely be present in the market (either alone or in cooperation with a third party), the transaction would not lead to an increased incentive for FS to foreclose access to infrastructure and/or traction<sup>31</sup>. In the absence of transaction-specific effects, the transaction has to be approved.

### **V.4 Additional considerations**

61. The transaction itself allows a non-incumbent rail operator, namely Veolia Transport Rail, to enter the market<sup>32</sup>.

62. It is also relevant to note that in response to the market investigation, travel agents and corporate customers did not raise any concern as regards the effect of the transaction on consumers on the routes concerned. Moreover, a handful of respondents including travel agents and corporate customers took a positive view, hoping that the transaction will benefit consumers.

### **V.5 Risk of cooperative effects of a joint venture**

63. Trenitalia and Veolia Transport are both operating in the market for passenger transport services. However, apart from a minor overlap in Germany where a rail service offered by FS (through its jointly controlled subsidiary Netinera, previously known as Arriva Deutschland) has three stops in common on a single route with a Euroline bus service

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29 Para 245 of the Form CO and internal documents of Veolia.

30 A possible customer foreclosure strategy regarding distribution of tickets appears very unlikely considering in particular the developments of internet sales and the existence of numerous independent travel agencies in Italy.

31 The Commission notes also that the transaction will not produce any merger specific foreclosure effect on the intermediary O&D pairs with a point of destination and a point of arrival in Italy. Indeed, Trenitalia already offers services on all these domestic routes. Therefore, the transaction does not alter FS' incentives to foreclose access to the infrastructure or traction services for Trenitalia's potential competitors on these routes.

32 Unlike in the recent case n°COMP/M.5655 SNCF/LCR/Eurostar where all operators are incumbents.

operated by Veolia, they are not simultaneously present in the same geographic market. Moreover, the joint venture's sales are projected to be very small relative to Trenitalia's and Veolia's business. Therefore, any risk of coordination following the transaction can be excluded.

## **VI. CONCLUSION**

64. 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 Commission*

*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*