

***Case No COMP/M.5803 -
EUROVIA/ TARMAC***

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/06/2010

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EUROPEAN COMMISSION

Brussels, 10/06/2010

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5803 - Eurovia/ Tarmac
Notification of 19 April 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 April 2010 the Commission received notification of a proposed concentration² by which Eurovia S.A. (hereafter "Eurovia", France) controlled by the Vinci group (hereafter "Vinci", France) acquires, sole control of six subsidiaries of Tarmac located in France, Germany, Czech Republic and Poland 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 internal market and with the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004, p 1 ("the Merger Regulation"). With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, 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 Pursuant to Article 4 of Regulation n°139/2004.

I. THE PARTIES

3. Eurovia is active in road construction and maintenance as well as production of construction materials (aggregates and asphalt) and services related to infrastructure. It is a subsidiary of the Vinci group, which is active in construction (building, civil engineering and hydraulic engineering), concessions (motorways and car parks) and energy-related activities (electrical engineering, thermal engineering and mechanical engineering).
4. Tarmac's subsidiaries produce and sell aggregates in France, Germany, Czech Republic and Poland.

II. THE OPERATION

5. Under a Share and Purchase Agreement dated 12 February 2010, Eurovia agreed to acquire sole control of those subsidiaries³ by way of purchase of shares. The notified operation is therefore a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

6. Taking into consideration the data for the last financial year submitted by the parties, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (Vinci: EUR 33,458 million) but Tarmac has a Union-wide turnover under EUR 250 million (Tarmac: EUR [...]million in 2009).
7. However, in at least each of three Member States the aggregate turnover of all the undertakings concerned is above EUR 100 million (Vinci: EUR [...] million in the Czech Republic, EUR [...] million in France, EUR [...] million in Germany, EUR [...]million in Poland) and in those markets the aggregate turnover of each of Vinci and Tarmac is more than EUR 25 million (Tarmac: EUR [...]million in the Czech Republic, EUR [...]million in France, EUR [...]million in Germany and EUR [...]million in Poland). Each of them has a Union-wide turnover in excess of EUR 100 million (Vinci: EUR [...]million, Tarmac: EUR [...]million). Vinci achieves more than two-thirds of its Union turnover in France but Tarmac does not. The notified operation therefore has a Union dimension.

IV. PROCEDURE: ARTICLE 9(2) REFERRAL REQUESTS OF CZECH REPUBLIC AND FRENCH REPUBLIC

8. By letter dated 12 May 2010, received on the same day, the French Autorité de la concurrence (hereinafter "l'Autorité") informed the Commission pursuant to Article 9(2)(a) of the Merger Regulation that the notified operation would threaten to significantly affect competition in three separate markets for primary aggregates, asphalt mix, and civil engineering (road works) within France, which present all the characteristics of distinct markets. The request does not concern markets for the above products outside the French Republic. By decision of today, the Commission referred the

³ Tarmac has other aggregates businesses in the United Kingdom and Romania. [...].

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

case, as regards the aspects concerning the markets for aggregates, asphalt mix, civil engineering and related activities in the French Republic to the competent French authorities.

9. By letter dated 17 May 2010, received on the same day, the Czech Office for the Protection of Competition (hereinafter “the Office”) informed the Commission pursuant to Article 9(2)(a) of the Merger Regulation that the notified operation would threaten to significantly affect competition in three separate markets for primary aggregates, asphalt mix, and civil engineering (road works) within the Czech Republic, which present all the characteristics of distinct markets. The request does not concern markets for the above products outside the Czech Republic. By decision of today, the Commission referred the case, as regards the aspects concerning the markets for aggregates, asphalt mix, civil engineering and related activities in the Czech Republic to the competent Czech authorities.

V. COMPETITIVE ASSESSMENT

10. Outside the Czech Republic and the French Republic, the proposed transaction does only lead to one horizontally affected market in Germany, e.g. the market for hard stone aggregates in the Dresden area. There are no horizontal or vertical affected markets in Poland.

Relevant product market

Aggregates

11. Aggregates are granular material from 0 to 150 mm extracted from quarries and pits. They can be used as end-products (in railway ballast) and constitute the primary raw material for construction products such as ready-mixed concrete (made of 80% aggregates), pre-cast products, asphalt (made of 95% aggregates), lime and cement. Primary aggregates are those produced from natural sources whereas secondary aggregate are aggregates of artificial origin, either by-products from other industrial processes or reprocessing of materials previously used in construction. Although the issue was left open in past cases, the Commission has stated that in general secondary aggregates are not substitutable to primary aggregates across the whole range of applications (including asphalt)⁵. As the targets are not active in secondary aggregates, the assessment will focus on primary aggregates.
12. Two main types of primary aggregates can be distinguished: (a) sand and gravel and (b) crushed rock. Sand and gravel aggregates derive from the erosion of hard stone particles that were transported and deposited by water and ice and are now extracted from shallow pits. Crushed rock aggregates result from the blasting and crushing of igneous, metamorphic and sedimentary stones. Two types can be distinguished: limestone (sedimentary) and hard stones. The two types of aggregates involve different production costs (as sand and gravel aggregates require only a screening process, these costs are lower) and different usage patterns: sand and gravel aggregates are often used in concrete production thanks to their rounded shape whereas asphalt manufacturers prefer crushed rock aggregates notably hard stone.

⁵ See inter alia decision in case COMP/M.4719 Heidelberg Cement/Hanson of 7 August 2007.

13. However, in past cases, the Commission stated that there are no compelling reasons to distinguish between those different kinds of primary aggregates, the choice of aggregates deriving primarily from the distance from the point of use rather than the type of material⁶. Eurovia submits that the Commission should not depart from its past decisional practice, given in particular the increasing use of sand and gravel aggregates in asphalt mix, except maybe in Germany where regulatory rules require the use of hard stone aggregates in asphalt. In the end, the market definition can be left open as the proposed transaction does not lead to any competition concerns independent of the market delineation.

Relevant geographic market

Aggregates

14. Aggregates are heavy and voluminous products whose transportation costs constitute a significant part of delivery prices. The parties submit that prices of aggregates double over 50 km by road depending of the topography of the area and the value of aggregates. Aggregates can also be transported over longer distances by barge or by train but only in areas where there is a lack of available resources such as Northern Germany. In general though, aggregates markets are local.
15. In previous cases, the Commission has retained a radius of 50-100 km around each production site depending on the particularities of the areas concerned⁷. The BundesKartellAmt has retained in previous cases a radius of 50-80 km. This issue can be left open since it does not affect the assessment.

Assessment

16. The proposed transaction does only lead to one horizontally affected market in Germany, e.g. the market for hard stone aggregates in the Dresden area. In this area Eurovia has one quarry in Sachsen and Tarmac has two quarries, one in Brandenburg and one in Sachsen. The market shares of Eurovia and Tarmac in that market is shown in the table below:

	Eurovia	Tarmac	Combined
Dresden	[5-10]%	[10-20]%	[10-20]%

17. The notifying party submits that Tarmac and Eurovia face strong competition from national and local competitors in the Dresden area. It indicates that the parties' market shares have fluctuated during the last three years (parties' aggregate market shares: [10-20]% in 2006, [20-30]% in 2008 and [10-20]% in 2008) depending on the contracts obtained by Tarmac and Eurovia.
18. The parties' combined market shares in the Dresden area are just above [10-20]%. The merged entity will not become the market leader as the biggest competitor in the Dresden area will remain BAG which has currently [20-30]% market share. After the

⁶ See inter alia decision in COMP/M.1827 Hanson/Pioneer.

⁷ See e.g. decision in case COMP/M.4719 Heidelberg Cement/Hanson.

transaction, there will still be five players, including the merged entity, having from [5-10] to [20-30]% market shares.

19. In light of the above, it is unlikely that the transaction would impede competition in the Dresden area.

VI. CONCLUSION

20. For the above reasons, the European Commission has decided not to oppose the notified operation agreement and to declare compatible with the internal market and with the EEA Agreement the parts of the transaction that have not been referred to the Czech and the French Competition Authorities under Article 9 of the Merger Regulation. 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