

***Case No IV/M.1504 -  
NSR / VSN / CMI / IGO  
PLUS***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 02/08/1999

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.08.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

**Subject: Case No IV/M. 1504-NSR/VSN/CMI/IGO PLUS**

Notification of 01.07.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 01.07.1999 the Commission received the notification of a proposed operation by which NS Reizigers B.V. ("NSR"), N.V. Verenigd Streekvervoer Nederland ("VSN") and Cariane Multimodal International S.A.R.L., ("CMI"), will acquire joint control of a newly formed subsidiary, IGO Plus B.V, a Dutch company.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. NSR is a Dutch company, controlled by Nederlandse Spoorwegen Groep N.V., (the Dutch public railway company) and ultimately controlled by the Dutch State, active in public rail transport of passengers in the Netherlands N.V.
4. VSN is a Dutch company, controlled by the Dutch State, active in the business of public bus transport of passengers in the Netherlands, principally in regional and city transport.
5. CMI is a French company controlled by SNCF (the French national public railway operator), incorporated for the principal purpose of acquisition of interests in multimodal transport companies and incorporated in 1999 for the purpose of taking a shareholding in the joint venture described hereunder.

6. These undertakings will participate in a joint venture company, IGO Plus B.V., (“JV”) (also referred to in certain agreements as: “Syntus B.V.”), which will be active in the business of integrated public train and bus services on a regional scale within the Netherlands.

## **II. THE OPERATION**

7. The activity of the JV will be limited to a region of the Netherlands covering part of the Province of Gelderland, the “Achterhoek” (“the territory”), under an exclusive concession granted by the Provincial authorities. In the concession territory, two regional train lines of NSR and all bus routes of VSN are contributed by these parties to the JV, while the non- regional train line running between larger cities (Doetinchem-Zevenaar-Arnhem) in the territory will be excluded as being part of the national railway’s main (through-going) “core” network.
8. This concession will be for an initial period of 5 years, renewable for another 5 years, subject to meeting certain improvement standards. This operation falls within the framework of decentralisation and liberalisation of (regional/local) public transport (in the form of “experiments”) proposed by the Dutch Government in draft legislation as a first step towards competition in this sector. According to this draft legislation pending before Parliament, concessions for bus and for combined bus and train transport will be for a maximum period of 6 years and from the year 2005 onwards, tendering for these concessions will be required, which is planned to be open only to companies with a limited share (to be further determined) of the relevant market.

## **III. CONCENTRATION OF A COMMUNITY DIMENSION**

### **Joint control.**

9. NSR, VSN and CMI will each hold one third of the share capital and voting rights; each of them will nominate one supervisory board member and all major and strategic business decisions will be taken with or be subject to approval by unanimous voting of the supervisory board or the shareholders’ meeting. Therefore, the parties will have joint control over JV and the operation constitutes a concentration in accordance with Article 3(1)(b) of Council Regulation No. 4064/89.

### **Full Function joint venture**

10. The joint venture will on a lasting basis perform all the functions of an autonomous economic entity. It will start its activities in the territory but may enter into other regional transport activities. Its initial concession may be renewed after 5 years. It will have capitalisation and other financial resources, equipment, management and personnel of its own and the right of use of the necessary local railway infrastructure presently controlled by Nederlandse Spoorwegen Groep N.V.
11. The combined aggregate world-wide turnover of the undertakings concerned is more than EUR<sup>1</sup> 5000 million. Nederlandse Spoorwegen Groep N.V. –EUR 2,469 million,

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include

VSN-EUR 992 million and SNCF (1997) –EUR 14,818 million. Each of these businesses have a Community wide turnover in excess of EUR 250 million (same figures as above), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence the concentration has a Community-wide dimension.

#### **IV. COMPATIBILITY WITH THE COMMON MARKET**

##### **The product market**

12. In this case there may be several possible markets involved: the market for public passenger transport, public bus transport, or public passenger transport by rail. The parties submit that before the operation, both modes of transport of public passenger transport, bus and train, were complementary in nature, with practically no overlaps, the main function of train lines in the territory being feeding cities, whereas bus lines were transporting passengers between destinations in rural areas not connected by train.
13. It is the aim of the operation to combine train and bus transport into one single network operated by one operator, thus improving quality, service and profitability and targeting users of private transport. Timetable setting, frequency planning, ticketing and fare setting will be aligned by JV for both modes of transport, but timetables and fares, as before, will be subject to approval by the regional authorities. Thus JV will, as before, have limited commercial freedom in regard of these elements. Through the operation, two previously separate networks will be combined into one network for regional public transport.
14. However, the definition of the product market may be left open, since the operation does not result in the creation or strengthening of a dominant position in the common market or a substantial part of it.

##### **The geographic market**

15. The most likely geographic market is regional in character, in view of distances travelled, destinations of the majority of travellers and regional regulation. In line with previous decisional practice <sup>2</sup>, the network of routes by road and/or the railway network in the area covered by the concession can be considered as the geographic market.
16. However, the definition of the geographic market may be left open, since the operation does not result in the creation or strengthening of a dominant position in the common market or a substantial part of it.

##### **Competitive assessment**

17. The concentration results in the combination of two previously separate regional transport services within the territory into one regional transport service. Train and bus

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turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>2</sup> Cases M. 748-CGEA/Networks South Central; M. 816-CGEA/South Eastern Train Co Ltd; M.901-Go-Ahead/Via/Thameslink; M. 943-CGEA/EVS/DEGV and M. 1100- CGEA/Linjebuss.

transport previously had hardly any overlaps where only one train line was duplicated by a bus route, at great loss of travel time by bus. These modes of transport were therefore highly complementary. The activity of the JV will be limited to a small region of the Netherlands.

18. Two of the three parents of the JV were until recently the sole operators in public train (NSR) and regional public bus (VSN) passenger transport in the concession territory as well as in the rest of the Netherlands. Meanwhile, VSN has in the course of 1998 sold its bus operations in 4 regions of the Netherlands to a newcomer in public transport. VSN thus ended its nation-wide monopoly for regional transport in the framework of liberalisation, with a remaining market share of approximately 90 % (parties' estimate) on a national basis, which is expected to be further decreased in implementation of the new legislation. NSR practically has a nation-wide rail transport monopoly. SNCF/CMI was not active on the regional transport market in the Netherlands.
19. The concession covers the "Achterhoek" - area which constitutes 25% of the Province's of Gelderland surface (3% of the Netherland's surface) and counts less than 1% of the Dutch population. There are no cross-border activities planned. The JV will account for about 1% of total public transport activity in the Netherlands in terms of passenger/kilometers ( NSR [0-5]% for rail transport and VSN: [0-5]% for bus transport in 1998) .
20. On the narrowest possible geographic market, based on the concession territory, two separate local monopolies in the territory will be combined into one local monopoly. However, the previous monopolies were based on law and were of unlimited duration, so that no potential competition was to be expected and barriers to entry were extremely high. After the operation, the exclusive concession granted by the authorities will be limited to a period of 5 years, with a possible extension for another 5 years on certain conditions. Thus, there will be new elements for competition resulting from a possible change of supplier by future competitive tendering for the concession territory.
21. In this respect, this concentration is comparable to the earlier concentrations in public transport treated under the Merger Regulation, which also involved the start of privatisation and liberalisation<sup>3</sup>. These concentrations were considered to be pro-competitive, in view of the limited duration of the exclusive concession and the competitive tendering being required for continued operations in the future, within the framework of opening the markets for local public transport to competition, allowing for new operators to enter. Any network spill over effects on a national or regional scale will be unlikely in the foreseeable future, taking into account the geographic spread of the competitive tendering.
22. Under these circumstances, it is unlikely that the present concentration would create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.

#### **Possible co-ordination between the parties**

23. After the operation, NSR and VSN will each continue their own operations of train and bus transport elsewhere in the Netherlands. NSR will retain its main train line within

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<sup>3</sup> See footnote 2.

the territory. Through the exclusive concession agreement between the JV and the provincial authorities these parties have effectively withdrawn from their operations of regional public passenger train and bus transport within the concession territory.

24. The JV's business plan provides for timetable co-ordination with other regional transport companies active in areas adjacent to the territory. It can be argued that such timetable co-ordination is a necessary element of cross-regional traffic and at any rate, trade between Member States would not be appreciably affected by any such co-ordination. Moreover, before the operation, similar co-ordination existed and timetables were then and will be in future subject to approval by the authorities. Fares will be supervised by the authorities. Furthermore, there are no indications that the JV could be used as an instrument for any appreciable restriction of competition between the parents, given the limited scope of the operation.

## **V. CONCLUSION**

25. 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, in application of Article 6 (1) (b) of Council Regulation (EEC) No. 4064/89.

For the Commission,