

***Case No COMP/M.2373 -
COMPASS / SELECTA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 08/05/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/05/2001

SG (2001) D/288457

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2373 - COMPASS/SELECTA
Notification of 30.03.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 30.03.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the UK based Compass Group PLC (Compass) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Swiss based Selecta Group (Selecta).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Compass was formed in 1987 to acquire the contract services division of Grand Metropolitan PLC. In July 2000, Compass merged with Granada Group PLC (Granada)³, adding Granada's hospitality and media businesses to its existing

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

³ Case COMP/M. 1972: Granada/Compass – Commission Decision of 29.06.2000

foods services portfolio. Subsequently, in February 2001, the businesses were demerged, leaving the hospitality (hotels and foods services) business with Compass and the media business with Granada.

4. Compass' current principal activities are in foods services, including contract foodservice and the operation of branded transport, leisure and sport concessions at airports, railway stations and other locations. The business includes brands such as *Upper Crust*, *Ritazza*, *Little Chef* and *Harry Ramsden's* and trade brands such as *Eurest*, *Select Service Partner* and *Medirest*. Compass also has interests in (ex:-Granada) hotels. However, Compass is currently in the process of disposing of its hotel business (with the exception of its *Travelodge* roadside hotel chain which is managed as part of the foodservice business) by way of an auction sale which it expects to complete in the first half of 2001.
5. Selecta is primarily a provider of vended food and beverage services for break-times. It is active across Europe in the provision of vending services (offering a broad range of drinks, snacks and meals through various vended service concepts). Whilst vending services represents the principal part of its activities, Selecta also sells vending machines and merchandise and (in France only in the EEA) has limited operations in the sale of drinks and snacks through its *Bonne Journée* outlets.

II. THE OPERATION

6. The notified operation consists in the proposed acquisition by Compass of the remaining 66.7% of the issued share capital of Selecta not already owned by Compass, to be effected by means of a public purchase offer under the relevant provisions of the Swiss Takeover Code. The formal offer document was published on 26 March 2001.

III. CONCENTRATION

7. Compass currently has a 33.3% shareholding in Selecta, only 20% of which is currently registered to vote. Compass does not currently have control (or the ability to exercise decisive influence) over Selecta. Through this operation, Compass will thus acquire sole control over Selecta. Therefore the transaction is a concentration within the meaning of Article 3(1) (b) of the Merger Regulation

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ [Compass EUR [...] million ; Selecta EUR [...]million]. Each of Compass and Selecta have a Community-wide turnover in excess of EUR 250 million [Compass EUR [...] million ; Selecta EUR [...] million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

⁴ 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 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.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. The economic sector concerned by the operation is the foodservice. In Europe Compass provides contract foodservices and concession foodservices and Selecta provides vending operation services.
 - (i) *Contract foodservice*
 10. Contract foodservice consists of the preparation, presentation and delivery of food and beverage services to clients which have chosen to outsource this activity on their premises. Clients are differentiated from the final customers, the clients being those whom the caterer has a contractual relationship with whereas customers are the end-users consuming the products made available at the client's premises. The provision of foodservice outside the home is performed by third parties and involve the supply of food and drink to customers for whom that service is not the primary reason for their presence on the premises i.e. principally in the business and industry (staff canteens in both public and private sectors) health (hospitals, nursing homes), education (schools, universities) and prison sectors. The client pays the contract caterer a fee for the provision of the catering service and the food is often sold to consumers at subsidised prices.
 - (ii) *Concession foodservice*
 11. Concession foodservice refers to the outsourcing of foodservice requirements in the transport, leisure and sport, and retail sectors. In transport, locations would typically include airports, railway stations etc. In leisure and sport, the service may either be permanently established (at leisure centres, cinemas, theme parks etc.) or occasional (for race meetings, conferences or other individual events). Retail comprises concessions in department stores, shopping malls etc. The principal purpose of the customer's visit is not for the consumption of food or beverage but for an alternative purpose. The contractor pays the client a rent for the right to trade at the premises; the contractor's income is sourced entirely from sales made to the public.
 12. In its previous decision COMP/M. 1972 Granada/Compass, the Commission has taken the view that contract foodservice and concession foodservice constitute separate relevant product markets. The Commission has left open the possible question of further segmentation of each market since irrespective of the definition chosen the analysis would have remained the same. The same situation applies to the present case.
 - (iii) *Vending services*
 13. The Euromonitor report on "Vending in Europe (2000) defines vending as follows: "vending (also known as automatic retailing) refers to the sale of products and services at an unattended point of sale through a machine operated by introducing coins, banknotes, payment cards, tokens or other means of cashless payment".
 14. The parties state that *full vending services* should be considered as a separate market from *ancillary vending services*. According to them, *full vending services* refers to the provision by vending of dedicated vending services comprising the supply and installation of vending machines, the cleaning and maintenance of such machines, the

management and supply or procurement of products/ingredients to stock the machines and the collection of cash takings or other means of payment. The parties state that, typically, the vending machines are situated in locations at which there is no member of the vending operator's staff present, so that the services are provided on a "remote" basis through a network of travelling support staff ("route network").

15. According to the parties *ancillary vending services* refers to the use of vending machines as part of a wider foodservice offering. Typically, ancillary vending services comprise the procurement of products/ingredients to stock the machines and some cleaning services. The parties state that a key characteristic of such services is that they can only be offered by the foodservice provider as an extension of its other "core services" (e.g. a staff restaurant), due to the lack of a route network. The vending machines are usually supported by the contract caterer's employees who are permanently present at the same location as part of the contract catering function; in effect, the machines are treated as an automated member of the contract catering staff.
16. The segmentation of vending services between full and ancillary vending services has not been supported by the market test. It has shown that whether the foodservice provider offers vending service as a core or ancillary operation, or whether the vending machine is owned and maintained by the site owner/operator, by a third party or by the product supplier, is not a relevant consideration for the purpose of market definition. Some operators on the market have expressed the opinion that there might be a segmentation between *vending services provided in the framework of outsourcing services within public and private bodies* and *vending services provided in the framework of concession services in public places*.
17. For the purpose of this case, however it not necessary to decide if the market for vending services should be further segmented since irrespective of the definition adopted the assessment of this operation would remain identical.

(iv) *Contract, concession and vending services*

18. A majority of answers to the market test have expressed the view that the market for vending services on the one hand and the market for contract catering and the market for concession catering on the other hand are closely related, in the context of satisfaction of the final consumer seeking for quick food service on site or take away.
19. Food and beverage suppliers regard mechanized vending as merely one of many possible routes to market their products. Nevertheless the market test has shown that from a supply side point of view, given the barriers to entry (important investment costs), many contract or concession foodservice providers have not developed a fully autonomous vending capacity and may be obliged to subcontract out to specialist vending operators (such as Selecta) some vending services which have been included with other services in the foodservice offer made to the client.
20. Furthermore, on the supply side, the logistics behind contract catering and vending operations are very different. Vending operators do not have the trained staff, facilities or infrastructure necessary to offer the kind of on-site catered facilities described above. They are qualified to install, maintain and keep stocked networks of vending machines. In turn, contract caterers do not have the necessary technically trained staff and infrastructure support to supply and service vending machines in discrete locations across a regional or country-wide network. This capability is central to the distinction

between, on the one hand, a contract or concession caterer who is able to offer limited vending services alongside and supported by its contract or concession catering offering and, on the other hand, a vending operator.

21. On the demand side, from the point of view of the client or the final consumer, vending services are also considered as one of a number of means by which food products are made available but the services provided by vending operators are not substitutable for the services provided by contract or concession caterers as they cater to different client and customer needs. Even if large parts of the product assortment are the same between vending services on the one hand and contract or concession services on the other hand, the final consumer distinguishes between them because (i) for the same products and especially beverages, the prices charged are generally higher in a vending machine and (ii) the need for consumption for a hot meal and its extras (bread, condiments, etc.) can not be satisfied by a vending machine. The vast majority of vending machines in Europe indeed only vend a limited offering of beverages *or* snack food products which serve the “between-meals snacks/refreshments” needs of customers. Although, as the level of sophistication of machines develops, there is some trend towards machines vending both wider ranges of products and combinations of beverage and food products, this has not yet reached the stage at which vending services can be said to offer the kind of coverage which would represent a substitute for contract or concession catering.
22. In the same way the market test has shown that clients do not see the different services (vending, contract or concession food) as being interchangeable but view them more as being complements to one another to satisfy the needs of their final consumer inside a building. Furthermore, the cost structures are different: whereas contract or concession catering arrangements commonly provide that the contractor supplies all food, labour and other on-site overheads at cost plus a management fee for the management and provision of the services which is paid by the client (or, sometimes, that the contractor provides the services for a fixed agreed amount), vending operators are often paid entirely or largely from the cash proceeds of sales to customers (perhaps in addition to fixed machine rental from the client). Accordingly, there is an absence of demand-side substitutability between contract foodservice and vending in terms of price, since vending represents a much lower cost solution for the client (generally for a much more limited service) than contract foodservice.
23. The Commission, therefore, for the purpose of this case views contract food service, concession food service and vending service to constitute separate relevant markets.

B. Relevant geographic markets

(i) contract and concession food service

24. In its previous decision COMP/M. 1972 Granada/Compass, the Commission has taken the view that the geographical dimension of these product markets was national. This definition was based on legislative differences (public procurement and labour laws); national preferences (in terms of quality, charging and prices) and strong differences with respect to in-house providing of feeding needs. The Commission also noted that the market was opening up with some contract catering contracts being signed on a European or even global level. However this type of business was still developing and had not yet caused the geographical scope of the market to be enlarged.

25. This view has largely been confirmed by the market test and therefore the Commission concludes that the market is still national at present for these product markets.

(ii) vending services

26. The parties state that relevant markets for vending services are national. The market test has confirmed that several factors preventing the development of a wider geographic market exist like for example : (i) absence of EU-wide legislation for the vending industry and differences in national legislations (product content and hygiene standards, environmental legislation etc), (ii) lifestyle and cultural differences (including differing national consumer tastes), (iii) differences in security and crime rates from one country to another, affecting the locations in which vending machines can be accommodated, the level of security measures required etc ; and (iv) the need for teams of staff (machine engineers, stockists, operators) available at reasonable proximity to service a network of machines, both on a regular basis and in response to client calls.

27. Therefore the Commission concludes that the market is national at present for vending services.

C. Assessment

28. The activities of the parties would overlap on a hypothetical market for vending services, including ancillary and full service vending, in Austria, Belgium, Finland, France, Germany, Luxembourg, Spain and Sweden.

29. The concentration would only give rise to an affected market in Sweden, where the great majority of the market is related to services in relation to coffee vending machines (mostly table-top machines) for the workplace. Operators provide the machines, deliver the coffee and provide regular servicing for the machines. Selecta is considered to be the leading vending operator in Sweden with a [45-55] % market share. However, the increment to Selecta's existing market share would be very low ([less than 5]%).

30. In addition, over the last 5 years or so, Selecta has grown in Sweden largely through the acquisition of its formerly franchised companies. However, a number of such franchised companies, concentrated in northern Sweden, left the Selecta group in 2000 and now operate in competition with Selecta under the JOBMeal name, offering a very similar service with the same vending machines. This split led to a decline in Selecta's Swedish turnover in 2000 and a loss of most of its business in northern Sweden. Selecta's presence is now focused in southern Sweden, where Selecta faces strong competition from companies such as Jede, Kaffeknappen, Eddo Restauranger and others. Selecta estimates that in the last two years its competitors have grown much faster than Selecta with Kaffeknappen, for example, growing an estimated 50% in 2000 in contrast to Selecta's decline. The vending machines that Selecta uses to provide its services (mainly from the Danish machine manufacturer Wittenborg) are also available to and used by its competitors. In fact, the competing operating companies have very similar offerings and are structured in a similar way, suggesting that clients would have little difficulty switching from one to another if they became dissatisfied with price or levels of service. Jede is slightly different, in that it is a vertically integrated company: it belongs to Nestle, a leading product manufacturer, and also manufactures its own machines.

31. Moreover, the vending sector in Sweden has experienced growth in recent years. This has been focused in the private sector – i.e. machines in offices, factories, hospitals and other working places – which has been encouraged by increased employment rates in Sweden and the trend towards large parts of the population leading busier lifestyles requiring quick, convenient drink, snack and food offerings. In addition, the market has low barriers to entry, as evidenced by the fact that several small new companies enter the vending activity each year.
32. In conclusion, the operation will not raise any competitive concerns on a hypothetical market for vending services, including ancillary and full service vending.

VI. CONCLUSION

33. 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 (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission