

*Case No COMP/M.2639 -  
COMPASS / RESTORAMA / RAIL  
GOURMET / GOURMET NOVA*

Only the English text is available and authentic.

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

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Article 9(3)  
Date: 26/02/2002



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26/02/2002  
SG(2002) D/228683

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 9 DECISION

**Commission Decision**  
**referring part of Case No COMP/M. 2639 - COMPASS/RESTORAMA /RAIL**  
**GOURMET/GOURMET NOVA to the competent UK authorities pursuant to Article 9**  
**of Council Regulation No 4064/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,  
Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989,<sup>1</sup> as last amended by Council Regulation (EC) No 1310/97 of 30 June 1997<sup>2</sup> on the control of concentrations between undertakings (the “Merger Regulation”), and in particular Article 9(3) thereof,

Having regard to the notification given by the undertaking Compass Group Plc on 14.1.2002 pursuant to Article 4 of the above-mentioned Council Regulation,

Having regard to the communication sent by the UK Permanent Representation to the European Union on 6 February 2002,

whereas:

1. On 14.01.2002, the undertaking Compass Group Plc (Compass) notified to the Commission, in accordance with Article 4 of Council Regulation (EEC) No 4064/89, a concentration. The notification relates to three separate acquisitions of certain of the foodservice businesses of SAirlines operated under the brands Rail Gourmet, Restorama and Gourmet Nova.
2. The UK Authorities received a copy of the notification on 16 January 2002.

<sup>1</sup> OJ L 395, 30.12.1989, p. 1; corrigendum OJ L 257, 21.9.1990, p. 13.

<sup>2</sup> OJ L 180, 9.7.1997, p. 1; corrigendum OJ L 40, 13.2.1998, p. 17.

3. In order to ensure the compatibility of the transaction with the common market and the EEA Agreement, Compass proposed on 5 February 2002, commitments to remedy a potential competition problem with regard to the UK market for on-train food concession service.
4. On 6 February 2002, the Commission received a request made by the UK Government (UK request) pursuant to Article 9 of the Merger Regulation, to refer to it the part of the transaction concerning the market for on-train foodservice in the UK. The UK request is based on Article 9(2)(a) of the Merger Regulation. The UK considers that the operation threatens to create or strengthen a dominant position on the market for on-train foodservice as a result of which effective competition will be significantly impeded in the UK.
5. The notifying party was informed on 8 February 2002 of the referral request made by the UK authorities and submitted its comments on 13.2.2002. According to the notifying party, on-train foodservices is not a distinct market from concession foodservices and even if it were to be defined as a separate market, the geographical scope is EEA-wide. Moreover, in case it had to be considered that the geographic market definition is national, the notifying party is of the opinion that the remedies submitted on 5.2.2002 remove the competition concerns raised by the merger.

## **THE PARTIES AND THE OPERATION**

6. Compass, the acquirer, is a UK company whose principal activities are in the foodservices sector and include: contract foodservice to business, education and healthcare sectors; concession foodservice involving the operation of branded transport, leisure and sport foodservice at airports, railway stations and other locations and vending services. 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.
7. Gourmet Nova AG (*Gourmet Nova*) is a subsidiary of the Swiss Company, Sairlines AG. Its business consists of catering concessions at travel hubs i.e. at airports and railway stations.
8. Restorama AG (*Restorama*) is a wholly owned subsidiary of the Swiss company Sairlines AG, founded in 1993 to supply staff catering for Swissair, mainly in Switzerland. It has since then expanded into Germany, Austria and Asia.
9. Rail Gourmet Holding AG (*Rail Gourmet*) is a wholly owned subsidiary of the Swiss company Sairlines AG. It's main activity is that of travel-related foodservices, primarily on-board trains but also, to a more limited extent, concessions in railway stations. In 2001 Rail Gourmet had subsidiaries in the following countries within the EEA: the Netherlands, Norway, Belgium, Denmark, Finland, Spain and the UK (Belgium and Finland in relation only to railway stations and railway companies) as well as in Switzerland. Its on-train foodservice activities include handling logistics associated with such services.
10. The transaction consists of the purchase of:
  - Gourmet Nova's 60% interest in Gourmet Nova Finland OY (which operates Gateways Restaurants which is the operating company at Helsinki airport) pursuant to an agreement signed and completed on 9 November 2001;

- part of the business of Gourmet Nova UK Limited (associated with the contract to provide concession foodservices at Manchester Airport: "Sungate") pursuant to an agreement signed and completed on 15 November 2001. Gourmet Nova UK Limited is owned by Gourmet Nova.
- Restorama AG and Rail Gourmet Holding AG pursuant to a sale and purchase agreement signed on 21 December 2001 (the RG Acquisition).

## **CONCENTRATION**

11. Compass has acquired sole control through three separate acquisitions of Gourmet Nova Finland OY and part of the business of Gourmet Nova UK Limited (associated with the contract to provide concession foodservices at Manchester Airport "Sungate") and will acquire sole control of Restorama AG and Rail Gourmet Holding AG. This last acquisition brings the three operations within the Community dimension thresholds pursuant to Art. 5 (2) (2) of the Merger Regulation. The agreements with regard to the first two acquisitions have already been completed. The transaction therefore constitutes one concentration within the meaning of Article 3 (1) b of the Merger Regulation.

## **COMMUNITY DIMENSION**

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion. In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million and in each of at least three of these Member States (Belgium, Germany and the UK), the aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million. On the basis of the foregoing, the notified operation has a Community dimension. The operation also qualified as a case for co-operation under the EEA Agreement.

## **ASSESSMENT**

13. As noted above, the UK Authorities have made a request under Article 9 paragraph (2)(a) seeking a partial referral of the notified concentration on the basis that the concentration in question threatens to create or to strengthen a dominant position as a result of which effective competition will be significantly impeded on a market within that Member State, which presents all the characteristics of a distinct market.
14. Pursuant to Article 9(3) of the Merger Regulation, the Commission assesses whether, having regard to the market for the products or services in question and the geographical reference market, there is such a distinct market within the Member State seeking the referral and that such a threat to competition exists. The Commission has then the possibility to either itself deal with the case or refer part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law.
15. The Commission has therefore sought to assess whether the relevant product market identified by the UK Authorities in the Request presents the characteristics of distinct markets within the UK and whether the concentration would threaten to create or strengthen a dominant position as a result of which effective competition will be significantly impeded on the market in question.

## Market definition

### *Relevant product market*

16. The UK request is based on the impact the concentration would have in impeding competition in the on-train foodservices in the UK, which constitutes, according to the UK authorities a distinct product market.
17. On-train foodservices comprises the logistics of sourcing the product range and managing the distribution to locations on route of the trains being serviced. Depending on the particular contract the service may also include the serving of food on-train via trolleys and catering cars. In the UK, this is primarily (but not always) undertaken by the train operators' staff. The market for on-train is a bidding market in which railway companies call for tenders from interested companies and award exclusive contracts for a certain period of time on the basis of qualitative and economic award criteria.
18. The parties have submitted that on-train forms part of the concession foodservice market. On the demand side, the parties submit that on-train clients' needs are very similar to those of other concession clients, for example at railway stations or in airport terminals: having chosen to outsource their catering requirements, they are looking for a third party to provide a range of food and beverage offerings to a captive or semi-captive shifting customer base whose primary purpose in being at the location is not to eat; in addition, clients in both segments are often looking for a branded product offering. On the supply side, the parties submit that the basic skills are also similar and that many providers of on-train foodservice, for example Italian group Cremonini (Agape) and German company Mitropa, as well as the parties themselves, also provide concession foodservice at other locations such as railway stations.
19. However, the investigation carried out by the Commission has confirmed that there is a distinct product market for the concession of on-train foodservices. This conclusion is based on the following factors:
  - first the substitutes available to railway companies are limited as they appear to consider that concession foodservice companies in general are not able to satisfy their needs, without adjusting the range of their existing services. Moreover, the alternatives available to passengers on-board trains are quite limited. These limitations are borne out by the parties themselves where a document submitted by the parties notes that “the UK on-board offer includes key value items at high prices – Kit Kat 50p”. This represents a mark-up on the high street price of approximately 100%. Thus by the parties own admission on-train caterers enjoy a certain degree of power to determine price.
  - secondly supply-side substitutability is very limited. In fact, undertakings active in the concession foodservice segment need to adjust their range of existing facilities and services in order to be able to satisfy the requirements of railway companies. This is due to the specific logistical nature of the service, in particular the need to hire staff and establish distributive facilities in different cities (train stops) and the need to have specialist equipment in order to provide the service. The ability of a concession food service provider to switch to on-train foodservice provision would therefore seem quite limited and would in any event involve considerable investment. Although it is a bidding market, this lack of supply-side substitutability is further illustrated by the fact that the number of companies that submit offers when contracts are tendered by railway companies in the UK is very limited (from 1 to 4) compared to the quite high number of concession food service providers, and that, in

general, only companies active in the provision of on-train foodservices participate in such calls for tender.

### *Relevant geographical market*

20. The UK authorities submit that the market for on-train foodservices appears to be national in scope. Although contracts are, in principle, open to tender internationally, focusing on the award of on-train foodservice contracts, the on-train caterer will need to have or establish a national infrastructure in the relevant country for the fulfilment of the contract. Given these considerations, according to the UK authorities, for the purposes of competition analysis, the market would appear to be more appropriately analysed as national.
21. The UK Authorities have made a final submission regarding the Eurostar contract and whether it should form part of the UK market for on-train foodservices. The Eurostar service links the UK to continental Europe. Facilities here need to cover stations outside of the UK. The Eurostar contract is a sizeable contract, which requires bases in three countries (UK, France and Belgium). The type of service provided to customers also appears different, although the logistics involved must closely follow that provided to other train services. The UK authorities have also pointed out that it is noticeable that Rail Gourmet has been awarded the contract to provide the logistics element in the UK, which could indicate that credible bidders for the contract may be limited in the elements they can bid for (this element of the contract being managed by the relevant railway operator member in each country of the Eurostar consortium). Consequently, it would appear, according to the UK authorities, that excluding the UK element of the Eurostar contract from the referral may be artificial. The Commission investigation has shown that, although 2 of the 4 bids for the Eurostar contract (excluding the logistic element which was awarded to Rail Gourmet UK) came from outside the UK, the contract was awarded to a company based in the UK, namely Momentum (joint venture between the Italian group Cremonini and Compass). In addition, one of the non-UK bidders explicitly stated in its offer that it would need to establish a subsidiary in the United Kingdom in order to comply with the obligations linked to the contract.
22. According to the Commission's investigation the geographic scope of the market can be considered as national. Although tenders exceeding the European directive's quantitative thresholds (400 000 EURO) have to be published at European level<sup>3</sup>, in practice companies without an operational base in the UK have not been successful in gaining the contract and those that expressed an interest have withdrawn from previous tendering exercises. Generally entry into the UK market has been by acquisition (eg Rail Gourmet purchased the public incumbent UK company for the supply of on-train foodservices). This national definition of the market is in conformity with the conclusions to which the Commission arrived in the past for neighbouring markets (contract foodservice and concession foodservice<sup>4</sup>).

### **Threat to creation or strengthening of a dominant position**

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<sup>3</sup> Directive 93/38/EEC coordinating the **procurement** procedures of entities operating in the water, energy, transport and telecommunications sectors *Official Journal L 199 ,09/08/1993* as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 *Official Journal L 101 , 01/04/1998 P. 0001 - 0016*

<sup>4</sup> Case COMP M. 2373 Compass/Selecta, COMP M. 1972 Granada/Compass

23. In the UK market for on-train foodservices, the merged entity would have a market share of [85%-95%] [...] which is already indicative of market power.
24. The market for on-train foodservices in the UK is characterised by periodic bids for a few large contracts. According to the parties, this means that the absolute level of market share is not as much of a concern as the number of potential bidders. Indeed, according to the parties, any company active as a concession foodservice provider is in a position to bid for on-train foodservice contracts. However, at this stage, the Commission's investigation has found that in practice the number of bidders for each tender is limited (1 to 5). Also entry may be hampered for new potential bidders by the need to establish an operational base and the fact that to carry out these services they are required to have a specific, knowledge of the UK market. Currently, the only remaining strong UK company able to compete with the parties in the on-train foodservice market would be Sodexo (with a market share of [...]). However, the merged entity would always be in an advantageous position when bidding for contracts given Sodexo's limited experience of UK railway operations and the fact that UK railway companies prefer to award contracts to companies that have experience as on-train foodservice suppliers.
25. In the light of the above, given the parties' high market shares and the fact that, at this stage, there is only one credible competitor established in the UK, it can therefore be concluded in line with the UK's Authorities assessment, that the concentration threatens to create or strengthen a dominant position as a result of which effective competition will be significantly impeded on the UK market for on-train foodservices.

## CONCLUSIONS

26. As the UK forms a substantial part of the common market, according to Article 9 (3) of the Merger Regulation the Commission disposes of a discretion whether to refer the case or not.
27. The necessary in-depth investigation of the case and the solution of possible competition problems through remedies in the on-train foodservice will require detailed investigation of local aspects. Given the specificity of the British market compared with other EEA States, the British competition authority will be better placed to make investigations, inquiries, in situ visits and will have closer knowledge of the market in question.
28. In conclusion, it appears appropriate to refer the part of the transaction dealing with on-train foodservices, as requested by the UK authorities.
29. The Commission finds that the conditions for referral laid down in Article 9 of the Merger Regulation are met in the present case and that, for the aspects concerning the market for on-train food services in the UK the concentration should be referred to the competent UK authorities with a view to the application of the national competition laws of the Member State in question.

HAS ADOPTED THIS DECISION:

*Article 1*

In accordance with Article 9 of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, the notified concentration consisting in the acquisition of sole control by Compass of certain of the foodservice businesses of SAirlines operated under the brands Rail Gourmet, Restorama and Gourmet Nova is, as regards the aspects concerning the market for on-train foodservices in the UK, hereby referred to the competent UK authorities

*Article 2*

This Decision is addressed to the United Kingdom.  
Done at Brussels, February 26,2002

For the Commission

**(signed)**  
**Franz FISCHLER**