

***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 6(1)(b) NON-OPPOSITION  
Date: 26/02/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.02.2002  
SG(2002)D/228672

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2639 – Compass/Restorama/Rail Gourmet/Gourmet Nova  
Notification of 14.1.2002 pursuant to Article 4 of Council Regulation  
No 4064/89**

**I. INTRODUCTION**

1. On 14.01.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the undertaking, Compass Group plc (Compass) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the following undertakings :

- (1) Gourmet Nova Finland OY
- (2) part of the business of Gourmet Nova UK Limited ;
- (3) Restorama AG and Rail Gourmet Holding AG

by way of purchase of shares.

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<sup>1</sup> 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. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that, in as far as it relates to markets other than for on- train food service in the UK, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.
3. By letter dated 5 February 2002, the Commission received a request from the UK for the referral to the competent UK competition authorities of the proposed concentration in as far as it threatens to create or strengthen a dominant position as a result of which competition will be significantly impeded on markets for on-train foodservices in the UK , with a view to assessing it under their national competition law, pursuant to Article 9(2)(a) of the Merger Regulation. On the same date as this decision and in reply to that request, the Commission addressed to the UK Government a decision to refer the case as requested.
4. 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.
5. By letter dated 1.2.2002 the Commission received the opinion of the EFTA Authority which indicated that the operation would not create or strengthen a dominant position within the EEA member states excluding the EU territory.

## **II. THE PARTIES AND THE OPERATION**

6. *Compass Group Plc (Compass)* is a UK company whose principal activities are in the foodservices including 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 Sairlines AG, a Swiss company. Its business consists of catering concessions at travel hubs i.e. at airports and railway stations. Gourmet Nova UK Ltd. and Gourmet Nova Finland OY are wholly owned by Gourmet Nova AG.
8. *Restorama AG (Restorama)* is a wholly owned subsidiary of 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 2000 Rail Gourmet was present in 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;
- Restorama and Rail Gourmet pursuant to a sale and purchase agreement signed on 21 December 2001 (the RG Acquisition).

### III. THE CONCENTRATION

11. Compass has acquired sole control through three separate acquisitions of first Gourmet Nova Finland OY secondly part of the business of Gourmet Nova UK Limited (associated with the contract to provide concession foodservices at Manchester Airport "Sungate") and lastly it will acquire sole control of Restorama and Rail Gourmet. The third 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.

### IV. 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. It also qualifies as a co-operation case under the EEA Agreement.

### V. COMPATIBILITY WITH THE COMMON MARKET

#### *(a) Relevant Product Market*

13. Compass is active in the *contract, concession and on-train food service* markets. Restorama is active in contract food service. Gourmet Nova is active in food concession services mainly at airports and railway stations. Rail Gourmet is active in the on-train food concession market and also has some food concession activities at railway stations.

#### *Contract foodservice*

14. *Contract foodservice* consists of the preparation, presentation and delivery of food and beverage services to clients and their customers where clients have chosen to outsource this activity on its premises. 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. Contract catering services are carried out in various sectors,

including business and industry (staff canteens in both public and private sectors); healthcare (hospitals, nursing homes); and education (schools, universities).

### Concession foodservice

15. *Concession foodservice* consists of the provision of foodservice requirements to the public in travel related locations such as airports, railway stations, ferries, roadsides, retail related locations such as departments stores and sports stadia and leisure venues. 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 location owner (client) a rent for the right to trade at the premises; the contractor's income is sourced entirely from sales made to the public.
16. In two previous Commission decisions<sup>2</sup>, the Commission found that contract food service and concession foodservice are separate product markets. In spite of some supply-side similarities the Commission found in *Compass/Granada* that the conditions of competition in the two markets were different (few companies operated in both markets and that these were the larger competitors; barriers to entry into concession foodservice were higher in terms of investment, reputation and access to established brands; concession contracts were generally longer and prices to consumers higher; also whereas contract caterers compete only at the tendering stage, concession caterers, whilst also subject to tendering, often faced competition from other outlets within the facility).
17. In the *Accor/Wagons-Lits* decision (M126) the Commission found against further segmentation of these markets on the grounds that the basic know-how is the same and the majority of undertakings were engaged in all market segments. In the present case it is not necessary to decide whether further segmentation would be warranted because irrespective of the definition adopted, the concentration will not lead to the creation or strengthening of a dominant position.

### On-train foodservice

18. *On-train foodservice* comprises the logistics of sourcing the product range and managing the distribution to locations on route of the trains being serviced. Depending on the service being provided, there is also 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.
19. With regard to on-train food service 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 the Italian group Cremonini (Agape) and the German company, Mitropa, as

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<sup>2</sup> Case COMP M 2373 Compass/Selecta, COMP M 1972 Granada/Compass

well as the parties themselves, also provide concession foodservice at other locations such as railway stations.

20. The market investigation carried out by the Commission and the views expressed by the UK in their request of 6 February 2002 have not confirmed this submission.
21. The request by the UK Government is based on the impact the concentration would have in impeding competition on the market for on-train foodservices in the UK, which constitutes, according to the UK authorities a distinct product market.
22. The preliminary 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 is very limited (from 1 to 5 depending on the Member State) compared to the quite high numbers 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.

***(b) Relevant Geographic Market***

*Food concession and contract catering*

23. In its decision in *Accor/Wagons-Lits* the Commission viewed the “group catering” markets as national. This definition was based on legislative differences (public procurement and labour laws); national preferences (in terms of quality, charging and prices) and strong national differences with respect to the proportion of catering done “in-house”. In *Granada/Compass* the Commission noted that while there were signs that the markets were opening up (with some contract catering contracts being signed on a European or even global level) the contract and concession markets remained national in character.
24. Some of the evidence submitted by the parties would indicate that this conclusion still holds true and that only a very small proportion of contracts are actually awarded across borders.

### *On-train foodservice*

25. The parties' have submitted in their notification that on-train is part of the food concession market and that this market is national in scope. However in the event that on-train foodservices were to be considered as a separate relevant product market the parties submit that the market for these services should be considered to be EU-wide on the grounds that tenders are published at EU level and therefore foreign companies can exercise some competitive constraint on national companies. Apart from the existence of EU-wide tendering the parties have not provided any reasons as to why they consider that for food concession the markets should be considered national whereas for on-train food service, which they consider to be part of food concession, the market should be regarded as EU-wide.
26. The UK authorities submit that the market for on-train foodservices appears to be national in scope. 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. 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.
27. The results of the Commission's investigation indicate that the geographic scope of the market can be considered to be no wider than national at present. Although tenders exceeding the thresholds (400 000 EURO)<sup>3</sup> for concession of on-train foodservices are now published at European level and companies in every Member State can bid for these contracts it is still necessary to have or to establish an infrastructure in the country where the service is to be provided. It is also necessary for the provider to have some knowledge of and to be able to cater to certain national preferences and tastes. Finally according to the parties own submission only a small proportion of contracts are actually awarded across borders.

### ***(c) Competitive Assessment***

#### *Contract and Concession Foodservice*

28. In relation to *contract foodservice* the only affected markets are Germany and Austria where Compass has [20% - 30%] and [20% - 30%] of the market respectively. The purchase of Restorama would involve an additional increment of [less than 5%] in Germany and [less than 5%] in Austria. In view of these de minimis increments the transaction does not therefore raise serious doubts as to the creation or strengthening of a dominant position in the German or Austrian contract foodservice market.
29. In relation to *concession foodservice* the affected markets would be Belgium where the combined entity would have a combined market share of [15% - 25%] share with an increment of [less than 5%], and the UK where the combined entity would have a

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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*

market share of [15% - 25%] with an increment of [less than 2%]. In view of these de minimis increments the transaction does not therefore raise serious doubts as to the creation or strengthening of a dominant position in the Belgian or UK concession foodservice market.

#### *On-Train Food Service Market*

30. At national level the only market affected by the transaction is the UK where the merged entity would have a share of [85% - 95%] [...] of the on-train food concession market.. The transaction in this respect will be analysed by the UK competent authorities as indicated in the Commission's decision pursuant to Art.9 and referred to at paragraph 3 of this decision.
31. The parties do not have a combined presence in any other national market for on-train foodservice. It is concluded therefore that the concentration does not raise serious doubts as to the creation or strengthening of a dominant position in those other national markets.

#### **VI. CONCLUSION**

32. For the above reasons, the Commission has decided not to oppose the notified operation in as far as it relates to markets other than that for on-train food service in the UK 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