

***Case No COMP/M.2960 -  
KEOLIS / AB  
STORSTOCKHOLMS  
LOKALTRAFIK /  
BUSSLINK***

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: 04/12/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04/12/2002.  
SG(2002)D/232975

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2960 - Keolis/AB Storstockholm Lokaltrafik/Busslink Notification of 4/11/2002 pursuant to Article 4 of Council Regulation No 4064/89<sup>1</sup>**

1. On 4 November the Commission received the notification of a proposed transaction by which Keolis SA ("Keolis") will acquire joint control over Busslink i Sverige AB ("Busslink") by the acquisition of shares from AB Storstockholms Lokaltrafik ("SL"). After the completion of the transaction Keolis would hold 70% of all shares the remainder being held by SL. Provisions in the shareholders' agreement ensure that Busslink would be jointly controlled by Keolis and SL.

## I. THE PARTIES

2. The French company Keolis, controlled by SNCF Participations, mainly provides passenger public transport services including bus, coach and railway services. It is active in France, Canada, Germany, Sweden and the UK. In Sweden it is only active through Citypendeln<sup>2</sup> a commuter train service in the Stockholm area.

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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).

<sup>2</sup> Keolis holds 90% of the shares in Citypendeln, the remainder being held by BK Tåg AB, a Swedish public transport operator.

3. SL is wholly owned by the Stockholm County Council and acts as a Public Transport Authority (PTA) being responsible for operation and procurement of public transport in the Stockholm area. The actual operation of the transport is handled by independent operators which have been contracted by SL following competitive tendering procedures. SL holds currently 40% of the shares in Connex Tunnelbanan, which operates the underground in Stockholm. However, SL has announced that it will divest its shareholding in Connex.
4. Busslink operates bus services for various PTAs in Sweden. It also provides charter bus services and operates trams, albeit to a limited extent. Busslink operates a fleet of 1700 vehicles and has 5500 employees under contract serving customers in Stockholm, Mid Sweden, North Sweden and South Sweden. 70% of its activities are centralised in Stockholm. Busslink is currently controlled by SL.

## **II. Community Dimension**

5. The undertakings concerned have a combined aggregated turnover of more than 5 billion<sup>3</sup> (SNCF reaching about € 20 billion, SL: 391 € million). Each of them has a Community-wide turn-over in excess of 250 million. Furthermore, the parties to the concentration do not achieve more than two thirds of their aggregated Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **III. JOINT CONTROL AND FULL FUNCTION JOINT VENTURE**

6. As a result of the transaction, SL will hold 30% of the shares and votes in Busslink and Keolis 70%. Provisions in the Shareholders' Agreement attribute joint control of the parent undertakings over Busslink,[...]. As a result, SL and Keolis will exercise joint control over Busslink.
7. Busslink is a full function joint venture. It does not only provide services for SL but provides its services to public authorities all over Sweden. It owns a fleet of 1700 vehicles and has 5500 employees. That makes it the second largest bus operator in Sweden. It has been SL's explicit intention as a shareholder to develop Busslink's competitive position in the field of contractual bus services to keep the position as one of the three main players and through that create competitive pressure in the market. Once this goal is achieved, SL would divest its shareholding to a competent buyer with long term ambitions on the Swedish public transport market. Following from the preceding, Busslink will perform all the characteristic functions of an autonomous economic entity.

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<sup>3</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 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.

#### **IV. The relevant product and geographic markets**

8. The parties suggest the relevant product and geographic market to be the market for the operation of public transport contracted by tender in Sweden<sup>4</sup>. This market would include a) regional and b) interregional public transport services by all modes of transport (bus and railway transport). The parties submit that operators on the Swedish market have historically submitted tenders for procurement procedures for both bus and railway transport for regional and inter-regional traffic. They also argue that it is not necessary for the operators to possess the physical assets and staff, as a new operator will usually be offered to take over the existing stock from the procuring Authority.
9. In previous decisions the Commission has assessed railway services and bus services separately<sup>5</sup>, while the assumption of a Swedish market for public transport services is in line with previous case law<sup>6</sup>. During the Commission's investigation, however, some competitors of the parties have pointed out that the geographic markets for public transport in Sweden might be local or regional in scope.
10. For the purposes of the assessment of the present transaction, it is not necessary to clearly delineate relevant markets as, in any event, the proposed transaction does not raise serious doubts as to its compatibility with the common market under any possible definition of a relevant market including the narrowest possible one, which in this case would be the market for public passenger transport services/rail in Stockholm County.

#### **V. COMPETITIVE ASSESSMENT**

11. On a market for public transport (comprising all modes of public transport) the parties reach a combined market share of [25-45]% in Sweden with Keolis contributing about [5-15]%. The closest competitors are Swebus ([15-25]%) and Linjebus<sup>7</sup> ([5-15])%. In Stockholm County - the only area where the current activities of the parties overlap - the combined market share would amount to about ([75-85])%. However, the latter market share would not be permanent as it would be effective only for the duration of the relevant contract (usually not more than 5 years). In recent tendering procedures in which Keolis and Busslink took part they faced competing bids from [...] and [...] in the first place. But also other competitors launched bids. Particularly for the Stockholm area an overview over recent tendering procedures by SL shows that there had been alternatives to Keolis and Busslink both in public bus transport and railway.

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<sup>4</sup> Profitable interregional transport services by rail and bus are not contracted by tender in Sweden and therefore are not part of the relevant market. These services are operated under a legal monopoly.

<sup>5</sup> COMP/M. 1768- Schoyen/Goldman Sachs/Swebus, decision of 10.12.1999; IV/M. 901 Go-Ahead/Via/Thameslink, decision of 24.4.1997

<sup>6</sup> COMP/M.1768 - Schoyen/Goldman Sachs/Swebus, decision of 10.12.1999, para. 11 with further references

<sup>7</sup> belonging to Connex

12. With regard to railway, the parties activities only overlap, if underground (rail-) services - as provided by SL through its subsidiary Connex Tunnelbanan in Stockholm - and commuter trains - as operated by Keolis through Citypendeln in the Stockholm County - are grouped together. In such a scenario Keolis and SL reach a high combined market share of [85-95]% in Stockholm. However, in both tendering procedures preceding the award of the contracts SL, as the procuring authority, had had the choice between several bidders, such as Linjebus, Swebus, SJ and SL Tunnelbanan for the commuter train transport and the French company Compagnie Générale d'Entreprises Automobiles in co-operation with Linjebus and Keolis in co-operation with BK Tåg.
13. In addition, SL has signed a binding agreement to divest its 40% shareholding in Connex Tunnelbanan but the divestiture has not yet been implemented. The divestiture would reduce the combined market share on the Swedish market for public transport by [...] % and remove the overlap in railway in Stockholm leaving only Keolis with [25-35] % in railway in Stockholm. The combined market share of Busslinks and Keolis on a market for public transport in Stockholm would be below [40-50] %.
14. Moreover, the market enquiries have confirmed, that entry barriers are low also for foreign competitors. This is evidenced by the recent market entries of Connex, Keolis, Arriva and the Danish operator DSB. Furthermore, the customers on the market are public entities that hold monopoly positions for the purchases of public transport services and therefore are in the position to exert significant purchasing power.
15. On the basis of the preceding, given that the market is a bidding market with regular calls for tender and a number of liable competitors in the market, it appears that the proposed transaction does not raise serious doubts as to the likelihood of the creation/strengthening of a dominant position in the relevant markets.

## **VI. CONCLUSION**

16. 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 Articles 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission