

***Case No COMP/M.3172 -
FERROVIAL / AMEY***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/05/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27/05/2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3172 – FERROVIAL/AMEY
Notification of 25.04.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 25.04.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Grupo Ferrovial, S.A. (“Ferrovial”-Spain), through its wholly-owned subsidiary Ferrovial Servicios, S.A. (“Ferroser”), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Amey, plc (“Amey”-United Kingdom) by way of public bid announced on 16.04.2003.
2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

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).

I. THE PARTIES AND THE OPERATION

3. Ferrovial is a diversified group with activities in construction (its core business), infrastructure concessions, real estate, telecommunications and services. The latter include the provision, through Ferrovial Servicios, S.A., of integrated business support services (building and infrastructure maintenance and management) to the private and public sectors in Spain and Portugal.
4. Amey is a leading provider of integrated business support services to the private and public sectors in the UK, comprising railway and road maintenance and management services, facility management and other outsourcing support services. Amey also provides fleet services.
5. The planned operation consists of the acquisition of sole control over Amey by Ferrovial, through a public bid, and will allow the latter to enter the British market for business support services.

II. CONCENTRATION

6. The proposed operation is therefore a concentration within the meaning of Article 3(1) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of Ferrovial and Amey have a Community-wide turnover in excess of EUR 250 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.

IV. COMPETITIVE ASSESSMENT

Relevant markets

8. The present transaction concerns the provision of integrated business support services to the private and public sectors in the UK. The notifying party identifies as relevant product markets for the purpose of the planned transaction, the provision of (i). railway management and maintenance services (ii). road management and maintenance services (iii). facility management (iv). other “white collar” BPO (Business Process Outsourcing) services and (iv). fleet services.

² 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.

Railway management and maintenance services and road management and maintenance services

9. In line with the decision adopted by the Commission in the *Metronet/Infraco* case³, Ferrovial states that the management and maintenance of railway infrastructure constitutes a separate product market with a national-wide (UK) geographic scope.
10. As to the management and maintenance of road infrastructure, the notifying party finds that the supply of these services is a separate product market as a result of a number of considerations namely (a) the structure of demand (which is organised by competent public authorities through separate public tendering) and (b) structure of supply (the machinery and human resources required differ significantly from those used for the provision of railway support services and therefore are not interchangeable among companies present in these two business segments).
11. According to the notifying party, the market for road support services would be national (UK) in scope since in practice, as shown by the tender results provided by Ferrovial for UK road maintenance during the period 2001-2003, only a negligible number of non-national companies submit tenders and are awarded the corresponding contracts. The corresponding regulations, the tendering conditions and the tendering costs differ substantially from one member State to another. A good knowledge of local conditions and a proven track record in the supply of these services in the respective countries are actually required.

Facility management services

12. According to Ferrovial, facility management comprises a broad variety of building support services integrating and optimising the supplies and installations which users of a building may require, such as cleaning, gardening, security, internal mail, etc. The notifying party contends that the supply of these services on a national (UK) basis constitutes a separate product market within the wider market for BPO activities: in contrast to the latter, facility management requires a lower skills base, involves less developed technology and is typically tendered for separately. As to the national dimension of this market, Ferrovial considers that the reasons supporting this assertion would be the same as those applicable to the railway and road support services mentioned above.
13. The Commission has examined the provision of facility management services on a national basis in the *SEI/Mitsubishi Electric* case⁴, but no precise decision on whether this area of activity was or was not a different product and geographic market was taken, since the operation envisaged did not give rise to any significant competition concern.

³ COMP/M.2694 – *Metronet/Infraco*.

⁴ Case No. IV/M. 2063 – *SEI/Mitsubishi Electric*.

Other “white collar” BPO (Business Process Outsourcing) services

14. On the basis of the notification submitted, the so-called “white collar” BPO services comprise a wide variety of integrated business support services involving a significant degree of expertise. These services may include (i) administration services (finance, accounting, human resources, payroll and procurement, etc.) (ii) industry specific applications (such as revenue and benefits provisions for local authorities, patient management for the health sector, customer relationship management and performance management) and (iii) IT services⁵.
15. According to Ferrovial, very limited substitutability exists among the three categories above in terms of both supply and demand since, generally speaking, these services are intended to satisfy different needs, competitors are not common, expertise and technology differ significantly and procurement tends to be organised in separate tendering proceedings. On the basis of these considerations, the notifying party states that although a single market for all white collar BPO services can be identified by contrast to the facility management services above, it may also be appropriate to consider the product markets on a more narrow basis by reference to the different services provided.

Fleet management services

16. The fleet services provided by the target company basically comprise the leasing of road transport vehicles and equipment. The Commission has stated in the *Fidis/SEI* case that this market could be divided into (i) the segment for fleet management services of light commercial vehicles (below 3.5 tons) and (ii) the segment for fleet management services of heavy commercial vehicles (between 3.5 and 6 tons). These markets were defined as national in scope.
17. Irrespective of all of the above considerations on product and geographic market segmentation, it must be noted that for the purpose of the present case it is not necessary to precisely define the relevant markets involved, since even on the narrowest possible market definition the planned operation does not give rise to any significant competition concern.

Horizontal and vertical issues

18. No horizontal overlaps have been identified with regard to the provision of railway infrastructure support services since on a national basis (UK), as established by the

⁵ The Commission has considered in the past that IT services can be further divided (on an application basis) into different product markets. It has also indicated that the markets for IT services continue to be national in scope, although increasing internationalisation was identified. In any case, market definitions have frequently been left open. See cases IV/M.668-Philips/Origin; IV/M.798-General Electric/Compunet; M. 1561-Getronics/Wang; M. 1901-Cap Gemini/Ernst & Young; M. 2195-Cap Gemini/Vodafone/JV; M. 2478-IBM Italia/Business Solutions/JV.

Commission in the past, only Amey is present in the British market with a [5-15]% market share.

19. As to the supply of road support services, both on a national or even on a narrower basis, the transaction does not lead to overlapping activities, given that Ferrovial does not provide this type of services anywhere in the UK . Only Amey is active therein with some [5-15]%.
20. The provision of fleet management services does not pose any concern, as Ferrovial is not involved in this activity. Significant concerns can be also discarded with regard to facility management since Ferrovial is not present in the national or local British markets for which Amey's position in the UK accounts for less than [0-10]%.
21. The same conclusion can be applied to other BPO ("white collar") services: in effect, even in the narrowest product and geographic market segmentation, Amey's market share would not exceed [0-10]% and Ferrovial has no UK presence in this area of activity.
22. Finally, on the basis of the information provided by the notifying party, no vertical issues have been identified.

V. CONCLUSION

23. 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