

***Case No COMP/M.3554 -  
SERCO /  
NEDRAILWAYS /  
NORTHERN RAIL***

Only the English text is available and authentic.

**REGULATION (EEC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 16/09/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.09.2004

SG-Greffe(2004) D/204043/204044

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

**Subject: Case No COMP/M.3554 - Serco/NedRailways/Northern Rail JV  
Notification of 13.8.2004 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

Dear Sir/Madam,

1. On 13.08.2004, Serco Group plc (“Serco”) and NedRailways BV (“NedRailways”) notified their intention to acquire joint control of the Northern passenger rail franchise (“Northern franchise”) within the meaning of Article 3(1)(b) of the EC Merger Regulation (“EC Merger Regulation”).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. THE PARTIES**

3. **Serco** is active in transport services including rail and metro in the UK, where it runs the Docklands Light Railway and the Metrolink in Manchester. Serco also operates the Merseyrail services through a separate joint venture company with NedRailways. Other public services where Serco is active in include healthcare and education.
4. **NedRailways**, a wholly owned subsidiary of Dutch Railways, is active in the UK and to a limited extent in Germany and Central Europe. In the UK, NedRailways operates the Merseyrail through a separate joint venture company with Serco.
5. **The Northern franchise** covers local and regional passenger rail services on routes in the north of England. It is a new franchise, which is intended to commence on 17 October 2004 and which will comprise services on regional and local routes presently

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

covered by two franchises: the North West regional franchise, operated by North Western Trains Company Limited ("North Western"), a subsidiary of FirstGroup plc ("FirstGroup"), and the North East, Yorkshire and Humber regional franchise, operated by Arriva Trains Northern Limited ("ATN"), a subsidiary of Arriva plc ("Arriva").

## **II. THE OPERATION AND THE CONCENTRATION**

6. The relevant businesses operated by Arriva and FirstGroup will be transferred to Northern Rail. The joint venture will be full function, performing on a lasting basis all the functions of an autonomous economic entity: the parties will have sufficient finance, assets and staff to operate the Northern franchise as an independent rail franchise operator.
7. Although the franchise term is limited to a maximum of eight years and nine months, Northern rail will perform on a lasting basis all the functions of an autonomous entity<sup>2</sup>. The transaction therefore constitutes a concentration under Article 3(4) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Serco: EUR 2,247.9 million, NedRailways: EUR 2,536.8 million, Northern franchise: EUR [...]). Each of the parties have a Community-wide turnover in excess of EUR 250 million (Serco: EUR [...], NedRailways EUR [...], Northern franchise EUR [...]) 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**

### **A. The relevant product market**

9. The parties have submitted that, in line with the Commission's previous decision in the case COMP/M.2446 - *Govia/Connex South Central*, the relevant product market is likely to be public passenger rail services in the UK, including heavy and light rail services and metro services. The parties consider that heavy rail, light rail and metro services are likely to be substitutable for each other, as they share the same physical characteristics, being operated on railway lines.
10. The parties have further submitted that bus services may be substitutable on each of the five flows. The parties have however also contended that the bus journey times are longer than those for train/metro, on the basis of which the relevant product market could be limited to passenger rail services (heavy and light rail and metro services) thus excluding bus services.
11. The market investigation suggests that bus services can compete at least to some extent on the relevant markets. However, the exact market definition can be left open in the

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<sup>2</sup> See Case No IV/M.901, *Go-Ahead/Via/Thameslink*

<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.

present case, since on all possible market definitions considered, no competition concerns could arise.

## **B. The relevant geographic markets**

12. The parties have submitted that the relevant geographic market is likely to comprise an individual flow (i.e. point-to-point journey), since no such flow is demand-substitutable for any other. The parties have submitted that passengers, especially business travellers and commuters, do not regard an indirect journey between their point of departure and their intended destination as an acceptable substitute for a direct journey, since the indirect journey, usually involving a change of services, will take significantly longer and will be less reliable.
13. The parties' activities overlap only for the supply of public passenger services by heavy and light rail and metro on five passenger point-to-point flows in the north west of England: (i) in Liverpool from Hunts Cross station to Liverpool city centre; in Manchester (ii) Altrincham station to Navigation Road station; (iii) Altrincham to Manchester city centre; (iv) Navigation Road to Manchester city centre; and (v) Eccles to Manchester city centre. Third parties have confirmed that the five point-to-point flows within these cities constitute separate relevant markets.
14. The total turnover generated by the parties on the five point-to-point flows in the UK represents only a very small percentage of total rail passenger train operating services (including heavy rail, light rail and metro and including any subsidies received) in the UK in terms of revenue and also in the UK public transport market. Therefore, the Commission considers, for the purposes of this decision, that the five local point-to-point flows in Liverpool and Manchester do not represent an important economic part in the context of the Greater Liverpool and Greater Manchester transport systems nor do they constitute a substantial part of the common market. The proposed concentration therefore does not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

## **V. CONCLUSION**

15. 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 (EC) No 139/2004.

For the Commission  
Franz FISCHLER, signed  
Member of the Commission